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ABSTRACT

This publication provides answers to questions concerning responsibilities of institutions of postsecondary education toward students who are deaf or hard of hearing under the Americans with Disabilities Act. These questions were originally received but not answered due to time constraints during two satellite conferences held by the Midwest Center for Postsecondary Outreach (Minnesota). Following an introduction and an explanation of PEPNet (the Postsecondary Education Programs Network), the questions and answers are organized by the following topic areas: (1) literacy, (2) auxiliary services--interpreting, (interpreting), (3) auxiliary services--note taking, (4) auxiliary services--captioning, (5) vocational rehabilitation, (6) administration issues, (7) residence halls, and (8) equipment. Extensive footnotes refer to court and agency rulings. (Contains 71 references.) (DB)

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ED 437 772

Americans with Disabilities Act

Responsibilities for Postsecondary Institutions Serving Deaf and Hard of Hearing Students

QUESTIONS AND ANSWERS

by

Jeanne M. Kincaid, Esq.
and
Sharaine J. Rawlinson, M.S.W.
Associate Director, MCPO

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Second Edition

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Preface

Welcome to the Second Edition of *The Americans with Disabilities Act: Responsibilities for Postsecondary Institutions Serving Deaf and Hard of Hearing Students.* This work represents questions that were received, but could not be responded to during the limited time we had for our two satellite conferences, May 8 1997 and March 19, 1998.

The questions in this manual are organized by topic areas: Literacy, Auxiliary Services – Interpreting, Notetaking, and Captioning, Vocational Rehabilitation, Administration, Residence Halls, and Equipment. Each area, except for Vocational Rehabilitation, is lead by answers from Ms. Kincaid, followed by my answers that are enclosed in text boxes. Our rationale for this is to separate answers that are given by Ms. Kincaid as an attorney, and those I have responded to as an ADA and 504 trainer. We must caution the reader not to construe Ms. Kincaid's responses as legal opinions, but rather as technical assistance based on the limited facts offered. . For questions or comments about the manual, please contact Sharaine J. Rawlinson, MCPO Associate Director.

In the Vocational Rehabilitation section, there is a lengthy response from Mr. Frederic K. Schroeder, Commissioner of Rehabilitation Services, Office of Special Education and Rehabilitative Services, U.S. Department of Education, in response to questions sent to him. The staff of MCPO wish to extend their appreciation to Mr. Schroeder and his staff for responding so thoroughly to our questions.

The response to our First Edition of this manual was overwhelmingly positive. I want to convey my appreciation to Jeanne Kincaid, Esq., for her collaboration with me on this effort. Appreciation is given to Anne Lynch for her outstanding proof-reading of this manual. Furthermore, I want to thank the staff of the Midwest Center for Postsecondary Outreach for their support, especially Patty Brill who completed the final formatting. MCPO extends its sincere appreciation to members of our satellite panels, Ms. Theresa Johnson, Dr. Patty Hughes, Dr. Edward L. Franklin, and Ms. Marta Belsky. Special recognition is extended to David Buchkoski, Patty Brill, and Dr. Debra Wilcox Hsu and Sue Wickstrom for their able coordination of these teleconferences.

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Introduction

In May 1997 and March 1998, the Midwest Center for Postsecondary Outreach, in conjunction with St. Paul Technical College, hosted a video teleconference in which four other professionals and I appeared. Although we answered some of the questions submitted, due to time constraints, we were unable to respond to a number of the inquiries. This document provides attendees and other viewers with technical assistance to some of the questions posed for our consideration. The information provided should not be considered legal advice, but merely serve as guidance in assisting providers, colleges and universities at large, and others in understanding the obligation of institutions of higher learning to serving students who are deaf and hard of hearing.

Although my analysis is strictly limited to interpreting Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), the reader is cautioned that the state in which his/her institution is located may also have laws that provide greater protections or rights to consumers with disabilities. In such instances, the college may be subject to higher standards than those enunciated by the federal civil rights laws. The reader is cautioned to seek legal counsel whenever there is an issue that is beyond their competence which might result in legal action. The information provided suggests responses to the limited facts offered. Very few cases are identical and a small change in facts may dictate a different response. Finally, the reader should be aware that these technical responses are offered in the context of the minimum obligation posed by federal law. As a matter of best practice or to enhance its diversity initiatives, colleges may choose to provide more or go further than the laws mandate.[1]

By Jeanne M. Kincaid, Esq.
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PEPNet: A National Collaboration

PEPNet, the Postsecondary Education Programs Network, is the national collaboration of the four Regional Postsecondary Education Centers for Individuals who are Deaf and Hard of Hearing. The Centers are supported by contracts with the US Department of Education, Office of Special Education and Rehabilitative Services. The goal of PEPNet is to assist postsecondary institutions across the nation to attract and effectively serve individuals who are Deaf and Hard of Hearing.

Four Regional Postsecondary Education Centers for Individuals who are Deaf and Hard of Hearing were created to ensure that every postsecondary institution in the United States could easily access the technical assistance and outreach services that the Centers provide.

Midwest Center for Postsecondary Outreach
St. Paul Technical College is the site of the Midwest Center for Postsecondary Outreach (MCPO). MCPO services the Midwest Region which includes the states of Iowa, Illinois, Indiana, Kansas, Ohio, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin.

Northeast Technical Assistance Center
The Northeast Region is served by the Northeast Technical Assistance Center (NETAC), located at the Rochester Institute of Technology in Rochester New York. NETAC is supported by one of RIT's colleges, the National Technical Institute for the Deaf. NETAC's region includes the states and territories of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island and Vermont.

Postsecondary Education Consortium
The Postsecondary Education Consortium (PEC) is located at the University of Tennessee at Knoxville. PEC serves the Southern Region which includes and states and territories of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Virgin Islands and West Virginia.

Western Region Outreach Center and Consortia
The Western Region Outreach Center and Consortia (WROCC) is located at the National Center on Deafness at California State University, Northridge. WROCC serves the states and territories of Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Northern Marianas Islands, Oregon, Utah, Washington and Wyoming.

Visit our Web Site at www.pepnet.org

Literacy

Jeanne M. Kincaid, Esq.

Could we assume at the postsecondary setting that a deaf student may be expected to achieve language literacy levels commensurate with college level work? We realize that American Sign Language (ASL) is an unwritten language, but we will not accept written work with poor or no language expression. Are we wrong? Right? Or somewhere in between?

Institutions of higher learning enjoy considerable deference in setting academic standards. Section 504 and the ADA should not be interpreted as obligating a postsecondary institution to lower its criteria, to the extent such criteria are deemed essential. The question posed then is whether a certain level of English proficiency is deemed by the college to be essential.

I know of no definitive guidance that squarely addresses this question. However, the U.S. Department of Education's Office for Civil Rights (OCR) upheld a state law denying interpreter services for a state-wide teacher credentialing exam other than interpreting the test instructions for a deaf candidate.[2] The state viewed the ability to read and write using the English language as essential for teaching and OCR was unwilling to disturb this assertion.

One must be cognizant of a potential double standard: if we require that all students be able to read the written word, how does the college accommodate students with learning disabilities, some of whom may be unable to read? One could distinguish the two groups in that students with learning disabilities may be expected to comprehend the English language and respond in a manner using the English language. Consistent with this interpretation, when viewed as a language issue, as a condition of enrollment, colleges often require international students to demonstrate a certain minimum level of English proficiency which enables them to comprehend the course subject and respond using English. Another consideration is that, although these civil rights laws obligate colleges and universities to provide testing accommodations, an institution is under no obligation to fundamentally alter the nature of the course or the program generally.[3] Although tests must be designed to measure the student's ability rather than his/her impairment, again, this limitation is not applicable when that is the skill that the test is designed to measure (i.e., ability to read and write English).[4]

Would the "intent of the law" encompass special developmental studies classes? Many deaf and hard of hearing students taking remedial and developmental English, reading and mathematics classes must repeat these classes two, three, or more times even when using interpreters and notetakers. Programs that have specialized deaf education teachers have had a greater success rate with less class repetition. Would, then, this service of specialized [services] meet the intent of the law and be considered reasonable accommodation?

1

Literacy

No. The ADA and Section 504 only guarantee reasonable accommodations. Any kind of specialized instruction, although laudable and in some cases highly effective, is not mandated by these laws. Services as described by the questioner are demonstrative of what might be considered a best practice, but left to the discretion of individual institutions.

My college has seen more and more students with lower and lower reading competency; we are an open admissions public college. A student's language competence can be interpreted to be a result of exposure to the language, thereby making their reading competence a part of their disability. To what extent would the college be responsible for providing adapted curriculum to meet the students' needs?

In my view, an institution of higher learning, whether an open admissions campus or one that imposes entry level standards, has no obligation under Section 504 or the ADA to fundamentally alter the nature of its program. In order to achieve success within a certain course, a college and/or a professor may reasonably expect a student to possess and demonstrate proficiency in the subject matter as set forth by the instructor. People should keep in mind that we are dealing with institutions of higher learning rather than public elementary and secondary schools which most certainly have a greater obligation under the nation's special education laws to provide specialized instruction, which in those settings, may include a requirement to adapt a student's curriculum. It is a myth that the ADA and Section 504 obligate an institution to ignore the symptoms or consequences of disability, be that illiteracy, low vision, behavior or any other manifestation. Rather, the institution must reasonably accommodate the disability. I know of no authority suggesting that federal civil rights laws in the postsecondary setting obligate institutions and professors to adapt their curricula in order to provide equal access. Again, this is a type of service which some disability providers may advocate that their colleges develop to better foster student potential.

We set up a self-contained ABE-ESL class to serve deaf students. The instructor is skilled in ASL. Is this a form of discrimination because deaf students are in a self-contained class?

Whenever an institution establishes a segregated course, i.e., one limited to students with disabilities, it runs the risk of running afoul of Section 504 and the ADA. These civil rights laws are designed to prevent discrimination and stereotyping. They both specifically prohibit segregation unless necessary in order to provide equal opportunity. Although an institution may choose to offer separate programs, under the ADA it may not require that students with disabilities enroll in them so long as the student is otherwise qualified to participate in an integrated setting.

Literacy

As a teacher, if a deaf student (with her interpreter present) requests to take her written tests using the interpreter instead of taking the written exam, the exam then becomes oral. Is this her right? She says her written skills are not adequate, but can answer with ASL (statistics class).

See response to question on page 2 above. As previously noted, in some instances, a college must permit the student to demonstrate his/her knowledge by some other means, when the nature of one's disability impairs the ability measured by the test, unless that is a skill that the test is designed to measure.[6] Notably, the type of course in which the student is enrolled may be critical in analyzing the college's obligation. From a legal standpoint, I disagree that any student who lacks written expression skills is entitled to be tested orally. I recommend that the disability services provider work with the student's professors on an individual basis to help the professor identify essential skills and alternative testing methods, where applicable. On occasion, when more thoroughly analyzed, professors recognize that what they may have considered to be essential is truly not. For example, some professors merely expect the student to demonstrate that s/he comprehends the material in some fashion. Other professors will deem written expression to be essential, which might be very difficult for a student enrolled in a higher education setting to legally challenge.

The National Task Force on Quality Services in Postsecondary Education for Deaf & Hard of Hearing recommends extended test time as well as interpreting of written language into ASL for students with reading disabilities (Learning Disabled) and are therefore entitled to extended time and interpreters that interpret the test questions, not just the directions. Have you seen any legal cases about test accommodations that go this far for deaf students? We just provide interpreters in the class and the students' test within the regular class period for written tests. Alternate testing sites are used if there are videos or media involved.

As mentioned in the previous question, in my view, this issue concerns a question of literacy. If the student has a hearing loss *and* a learning disability, he or she may be entitled to additional accommodations, but "interpreting test questions" in my view, goes beyond the reasonable accommodation requirements of the ADA, and is treading very close to infringing upon academic freedom. Whereas, extended test-taking time may be reasonable if a learning disability accompanies the hearing loss. But I question those individuals who suggest that persons who are deaf should be treated as if they have a learning disability and be afforded similar accommodations – I do not believe that to be the case. Again, the extent that a particular professor is willing to go may dictate the outcome in these cases. Recently, OCR denied a request by a deaf student that a college modify its instructional material in a reading lab to ASL to assist her in learning English. OCR concluded that there is no established method for translating written English

Literacy

into written ASL and that instructional material in this format is not available. Accordingly, it found no Section 504/ADA violation.[7]

What are reasonable expectations for English (reading and writing) literacy for deaf students at a: (a) University; (b) Community College; and (c) Technical College?

Generally, there is no distinction between ADA/Section 504 coverage based on the type of institution involved other than described later in this document pertaining to communication preferences and building access. In such instances, the determinative factor will be whether the college is private or public. For the purposes of this question, however, I see no distinction other than to comment that certainly course content requirements vary between institutions, thus yielding different obligations. For example, the ability to read and write in English may be expected to vary by the nature of the course of study. Certain professions will not impose the kind of literacy requirements mandated by other career choices.

Is it permissible to require a student to fail a course before providing auxiliary services?

Absolutely not. If requested, a student must document the presence of his/her condition, along with justification for the requested auxiliary aid. In determining what might be the appropriate accommodation for a given student, one typically looks at the kinds of services the student has made use of in the past to guide the decision making. Generally, the only time no accommodation would be warranted is when the documentation suggests that there is no need or the student's history demonstrates an acceptable rate of success without accommodation.

However, even in the latter instance, the student's need for accommodation may change if s/he experiences difficulty, which we frequently see in a college/university setting where the requirements are often more difficult to meet in comparison with a high school setting.

Sharaine J. Rawlinson, MSW

May colleges require a formal English language assessment for deaf students? What would that look like? Are other institutions doing that?

Several colleges already require formal English language assessments. Colleges can require deaf/hard of hearing students to meet the same English standards as hearing students when English is considered to be an essential function of the course.

Auxiliary Services

Interpreting

Jeanne M. Kincaid, Esq.

If a U.S. agency (Department of Labor) has contracted with a private corporation to operate a Job Corps Center, who pays for accommodations for deaf/hard of hearing [consumers]? The Company or the Federal government? Is the Federal government exempt?

Although federal agencies are not covered by the ADA, they are subject to Section 504. The private corporation is likely subject to the ADA and, if it receives federal financial assistance, Section 504 as well. Whenever an entity enters into any contract with another entity, it should carefully consider the question of which body will ultimately be responsible for the cost of accommodations. Arguably, absent agreement to the contrary, both entities may be charged with responsibility.

What are the legal implications of imposing deadlines on interpreter requests for classes? For example, students must request interpreting services at least three weeks before classes begin to allow time [to arrange] for services.

An institution may impose "eligibility criteria" if necessary to meet its obligation to provide effective accommodations.[8] Many accommodations take time to secure and implement. Thus, OCR has stated that an institution must be given a "reasonable" amount of time to meet accommodation demands.[9]

As many colleges have experienced a shortage of interpreting services in their geographical area, increasingly they are urging students to register early to ensure that the classes in which they seek to enroll have the services of an interpreter. Although in the past, OCR frowned upon time requirements,[10] more recently the agency has upheld such requirements to the extent a college can justify the timeframe.[11] I suggest that colleges word policies in a manner that is not punitive. For example, a statement such as: "Students needing interpreter services are strongly encouraged to register at least three weeks in advance of class to better ensure that an interpreter is located and available. A failure to do so might limit our ability to meet your needs." Thus, even if a student registers two weeks before classes begin or drops and adds a different course, the college is still obligated to attempt to accommodate the student.

If a company that requests interpreting services for an employee taking a class at a community college is willing to pay either part or all of the cost, is it okay to have them pay? May the company come back later and insist that we (the college) should have paid?

Auxiliary Services

Interpreting

I do not believe it is impermissible for the employer to elect to pay for one of its employee's accommodation needs.[12] Yet, I do agree that there may be some risk if the employer later discovers that the college had an independent obligation to provide the service. Under normal circumstances, it would likely be the financial obligation of the college to provide and pay for accommodation requests.

Must colleges pay for interpreter [services] for internships, practicum experiences, and job interviews? What is the prospective employer's responsibility?

This is a complex question with no definitive answer. Employers with fewer than 15 employees are not covered by the ADA, hence they would have no legal accommodation obligations under the federal law, although many states' laws impose similar obligations for employers with fewer employees. The next question is whether the student is an "employee" for ADA purposes. If they are unpaid, they probably are not covered by the ADA via the employer. On the other hand, to the extent an internship/field placement is an aspect of the campus curriculum, it would likely be considered a "service, program or activity" of the college, and subject to ADA mandates.[13] One source of potential assistance is vocational rehabilitation, with its mission of employability. At a minimum, that agency may be willing to pay for interpreter costs for a job interview if the student is eligible for vocational rehabilitation services. In my view, under no circumstances should a student be denied an interview solely due to the need for an interpreter. I encourage colleges/departments to work creatively with its cooperating employers to share accommodation costs. I further urge colleges to be cautious about limiting the employment options of students who need interpreting services, such as having them work on campus where interpreting services are likely to be more readily available and less costly, as such will result in more restrictive placement options for students with hearing loss. In the end, there is little argument that the student has a legal right to accommodation and if denied, could file a claim against both the employer and college. Funding disputes between colleges and participating employers should never delay services or placement.

I am a deaf student currently attending law school, which has internship requirements (law practicums) where I will work for law firms, judges, etc., as a part of my requirements for graduation. My question is: since as a student completing these internships and the evaluations of my work are required in order to be granted my law degree, who pays for the interpreters, the school or the intern employers?

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Interpreting

As mentioned above, arguably both the employer and the university have independent ADA obligations to you. Remember, however, that not all employers will even be covered under the ADA. Thus, should you work in a small law firm with less than 15 employees, the ADA would not be applicable. Moreover, even if the firm has the requisite number of employees to implicate the ADA, it may have an argument that the accommodation costs pose an "undue burden" on it. That determination can only be made when examining the cost of accommodation against the resources of the firm. On the other hand, there is no question that the courthouse itself falls under Title II of the ADA. Indeed the U.S. Department of Justice has entered into a host of settlement agreements with courthouses to ensure equal access. My general advice to consumers is to work with both the employer and the higher education institution on an agreement that provides what you need.

Suppose that the internship is not a requirement of the program, but rather an option? Must the college then provide an interpreter?

I see no legal distinction between program requirements and optional experiences, at least where credit is given. Again, the ADA's language covering all the entity's services, programs and activities broadly sweeps most experiences within it. If, on the other hand, the department merely posts notices about outside employment or volunteer opportunities, such that they are not truly part of the college's program, the college likely has no accommodation responsibility vis a vis the employer.

As long as there is no clarity from the law regarding who should cover the cost for support services in specific situations (in coop/internships) both institutions and agencies will skirt their responsibilities and stagger the process. Understanding that finding monies may not be easy to accomplish, do you think that Congress can begin to make clear decisions in a more timely manner regarding whose responsibility it is to cover expenses in specific situations.

I fear that funding disputes jeopardize the equal opportunity mission of the ADA. Providers of services for students with disabilities have enormous responsibility to educate college/university leadership of its legal obligations and ensure that the institution fulfills its responsibility. In many instances, an employer in such a situation will have an excellent argument that it is not legally responsible for the accommodation. In response to the role of Congress, it is very unlikely, in my view, that it will ever provide the kind of clarity that the inquirer wishes. Most legislation, by design, does not. That is why federal and state agencies issue rules and regulations, to flesh out the policy behind legal enactments. I think folks should watch for rulings issued by OCR in this area. Thus far, my conclusion is that OCR is likely to hold the *college* responsible for ensuring that the student intern receives necessary accommodations.

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Must a college provide an ASL interpreter for a four month period study abroad program?

Like internships, a study abroad program constitutes a service, program or activity of the college, implicating the ADA and Section 504. Historically, OCR has applied Section 504 to study abroad programs and in one instance required a college to fund an interpreter to accompany a student abroad.[14] However, there is now some suggestion, in light of a U.S. Supreme Court ruling,[15] that such programs are not covered by the ADA or Section 504. In that decision, the Court held that Title VII, which prohibits unlawful employment discrimination, does not apply overseas to an American owned company. According to the Court, to have the law apply overseas requires an explicit expression of Congressional intent. As a result of this decision, Congress amended various civil rights laws to ensure that their employment provisions extend outside the continental U.S. However, Congress did not amend relevant provisions of Titles II or III of the ADA or Section 504, thus leaving some doubt as to their applicability overseas.

As a general matter, a college, which denies reasonable accommodations to its students seeking overseas travel connected with the university, takes a considerable legal and political risk. The Supreme Court decision cited above may be distinguishable. Moreover, as a matter of educational policy, it would be quite a statement for a college to assert that it is willing to deny equal opportunity to overseas study solely based upon one's disability. Nonetheless, I do envision some instances where study abroad may pose an undue burden or a legitimate health and safety concern which cannot be overcome despite reasonable accommodation efforts.

Scenario: 60 year old deaf man with minimal English reading and writing skills enrolls in Adult Basic Education (ABE) at a community college. His Vocational Rehabilitation status was active at one time, but has recently been terminated. Obviously, the individual qualifies as a student with a disability and is, therefore, provided sign language interpreters. He has been enrolled in the ABE program for four years at a cost of at least $11,500, and has shown minimal progress. When does the institution's responsibility for interpreter services to this individual end, if at all?

As community colleges are generally open enrollment with no limitations placed on any student wishing to retake a course, I believe it would be impermissible to limit the enrollment of a student with a disability. However, if the college adopted a policy that limited students to taking courses a certain number of times, such a policy could be applied to students with disabilities. One might also argue that since the accommodation has not been effective in the past, the college will no longer provide it. Or the college may suggest that to continue to provide services with no progress wastes valuable resources and thus poses an undue burden on the

Auxiliary Services

Interpreting

college. Although a college may make such arguments, I am unaware of any court or agency that has directly addressed this issue.

An instructor gives permission for students to audiotape class lectures. A deaf student in the class decides to videotape the class and sign language interpreters, likening videotaping for a deaf student to audiotaping for a hearing student under equal access provisions. The interpreters do not want to be videotaped and threaten to walk out if the student insists on videotaping. What are the rights of the student? What are the rights of the interpreters? What is the responsibility of the institution? How do you balance these rights if they seem to be in conflict?

Audiotaping a class is not the same as videotaping. Certainly the professor must approve and I would have concerns about the other students' concerns about being videotaped. If this is such a serious issue, as demonstrated by the interpreters' reactions, the college might consider audiotaping the class and providing the student with a written transcript, which is the functional equivalent. I would explore with the interpreters why they are so opposed to the taping. Interpreters generally serve at the behest of the university and one would need to review what kinds of agreements or arrangements they might have with the university. Generally speaking, students with disabilities do not have the right to dictate accommodations.[16] Although the ADA strives to provide equal opportunity to individuals with disabilities, it does not guarantee equal outcomes.[17]

A deaf ASL-using student at Gallaudet University requests an interpreter for a class taught by a hearing professor who is not fluent in ASL. The university balks, stating that sign language is the dominant language used at Gallaudet and our communication policy requires recognition and acceptance of all forms of sign language (ASL, PSE, etc.) The student counters that he is being denied equal access to course content because s/he does not understand the professor. Is Gallaudet violating the ADA? Who is right?

If Gallaudet requires all of its teaching faculty to be fluent in sign language, including ASL, and it is alleged that the faculty member lacks such skills, certainly the student may register a complaint with the university. The university might consider having someone objectively evaluate the professor's skills to determine if the student's allegations are true. If so, I think it wise that the university provide an interpreter until such time as the professor becomes proficient. Whether the student would succeed under the ADA is another question, especially if other ASL-using students are effectively following the professor.

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On the other hand, the questioner may be suggesting that the professor is not fluent in ASL, and that such fluency is not a condition of employment. Whereas, all students enrolled in Gallaudet are required to be proficient in a variety of modes of communication, and not just ASL. If that is the issue, the university may be able to defend its position by asserting that all candidates for admission to Gallaudet must be proficient in a variety of modes of communication. Such a requirement would then be considered a "technical standard" under Section 504 and the ADA. If considered essential, which is tenable given the unique nature of a university like Gallaudet, the university may likely prevail. Here, I would examine the university's technical standards. Are they publicized? Are they clearly a condition of enrollment?

If the location of the college is such that interpreters are not interested in accepting the student's classes, may the college defend itself as to why full interpreter coverage was not provided? For example, a college in a high crime area.

Reasonable accommodations must generally be provided subject to certain defenses including undue administrative and financial burden.[18] Within the past few years, OCR has recognized the critical shortage of qualified interpreters to meet the societal needs of the deaf population nation-wide.[19] OCR enunciated a standard in what I view to be the leading case in this area. A college or university must demonstrate that it has made "diligent efforts" to locate qualified interpreters.

It meets this standard by widely advertising, not merely within its immediate locale, and by demonstrating its willingness to pay interpreters at the comparable community standard. If, despite these efforts, the institution has been unsuccessful in securing qualified interpreters, the college will not be found to have violated Section 504 or the ADA.[20] The reality is that in some situations there will be no interpreters available or willing to meet the need. In the case of interpreters who are available but at a distance, I believe that the university must be willing to compensate such individuals for their travel time. Under this analysis, therefore, if no interpreters are willing to work in a certain area of the state, despite the diligent efforts made by the university, the university will likely have a valid defense of undue burden.

As you said before, let's suppose, through the negotiating process with the college and the deaf student, the college stated that interpreting services are only available on Tuesday and Thursday, and the student still insists on having interpreting services on other days, what would be the next step?

Auxiliary Services

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Before insisting that a student take classes on certain days, the college should be in the position to establish that this restriction is absolutely necessary given a true shortage of interpreter services despite the college's willingness to pay the prevailing community rate. Remember that every other college student has a right to select courses based on his/her own personal desires. Such restrictions should not be imposed lightly and the college must be prepared to demonstrate that its recruitment efforts have been thorough.

I work for a college and am deaf. My department has agreed to support my studies to complete a BS [degree] at my college. I take class part-time, both days and evenings. Because I am in a position as a "staff member" not "faculty member" or full-time student, I am among the last to get an interpreter [for] my classes. On occasion, I must withdraw from a course. My opportunity to complete a BS is not equal to my hearing peers. Please advise me.

Employees with disabilities are also protected by the ADA and Section 504 to the extent the institution itself is covered.[21] All aspects of employment, including training and educational opportunities apply with equal force. If, as you suggest, the department is responsible for paying for the costs of interpreting services, this may be contributing to the problem. I encourage colleges and universities to consider utilizing a centralized fund for employee accommodation requests that may be costly. Otherwise, I find it is far more likely that unlawful discrimination will occur due to the cost incurred by one department as opposed to centralized cost sharing.

If, on the other hand, the failure to provide interpreting services is due to a shortage of available interpreters, rather than a shortage of money, again the institution may have a legal defense of undue administrative burden. As the college's mission is to educate students, it is not uncommon that employee needs are not afforded as great a priority. You may wish to consult with your institution's ADA/Section 504 coordinator.

Is there a limitation that can be placed on monies spent for interpreter costs (i.e. movie nights, social programs, etc.)? If a student decides to rush a fraternal organization, is the school required to provide accommodation since the fraternal organization receives some financial services from the school?

Generally, an institution of higher learning may deny accommodation requests if they are deemed to be of a personal nature.[22] Hence, a college could likely lawfully decline to provide interpreting services should a student who is deaf wish to join a study group in preparation for examinations. Public events, such as

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movies, are another matter. In such cases, institutions need to provide some level of access. The ADA regulations do not envision that a public member has a right to an accommodation upon demand. Thus, a college may select a certain night that interpreter services would be provided for an event that is offered on different occasions. If the individual chooses not to attend the predetermined evening, the college should still consider the needs of the individual, but the fact that the institution provided full access at another time will be a factor in determining if it has established an undue burden. [23]

One of the examples cited above, rushing a fraternal organization, appears to fit somewhere in the middle of the two opposite ends of the continuum. If the organization receives federal funding from the college, or is controlled by the college, Section 504 and/or the ADA are implicated.[24] Typically, OCR does not limit a college's legal obligation in light of the department impacted, but rather, considers the overall budget of the university.[25]

However, since Section 504's language, which addresses fraternal organizations directly, seems much more limiting, one could argue that a college fulfills its federal statutory obligation by ensuring that the member organization does not discriminate. In other words, Section 504, and I would surmise the same result would occur with the ADA, envisions that the budget of the fraternal organization may be all that enforcement agencies and the courts will consider. Moreover, rushing a fraternity is likely to be viewed as personal in nature, although some of its events could require accommodation. I am unaware of any court or agency rulings that have directly addressed ADA/504 compliance with respect to social clubs affiliated with a university.

In summary, I do not believe that an institution may ever place a dollar limitation on services. Prioritizing services due to demand and bona fide lack of qualified interpreters may be justified in certain situations. The line between personal services and reasonable accommodations is blurry, but I believe that is how denial of services or accommodations will justifiably be upheld. Finally, social clubs may be viewed differently under Section 504 and the ADA. Colleges will need to ensure that such organizations do not themselves discriminate against students with disabilities but a college may not have the legal obligation to fund all of a student's interests.

Regarding the chronically absent student who also abuses the interpreters, a student refuses the two qualified [staff] interpreters and the two qualified interpreters refuse to return to any of his classes. Once an outside agency is hired for that student in lieu of staff interpreters, can the institution revert back to providing notetakers for the student once he returns to school?

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Unfortunately, some students have not acted responsibly in getting their accommodation needs met. For this reason, some institutions have implemented rules or conditions, particularly with respect to interpreting services.[26] In one significant OCR ruling, the agency upheld the imposition of reasonable conditions which included the following: suspension of services for two or more no-shows, with a good cause exception; suspension of services for being late two or more times without good cause; and refusal to enter into a service agreement.[27]

In my view, if a particular student has "abused" services, a college could choose to impose conditions on that student only, rather than the entire population of students with disabilities.

Neither Section 504 nor the ADA affords consumers the right to demand a particular interpreter. Colleges generally must afford effective accommodations. Public institutions additionally must give primary consideration to the student's communication preferences.[28] The latter is not an invitation for the student to demand a particular person. Rather, the language is intended to denote the importance of the person's mode of communication.

If an interpreter is qualified, as defined below, the institution has met its obligation. A college has no legal responsibility to honor a student's demand for a "certified" interpreter, an "outside" interpreter or any other qualification.

In some instances, there will be conflicts between staff and consumers. Sometimes a college may choose to reassign another staff member. However, the institution should be cautious or it might find itself in the above scenario where it is acceding to what appears to be unrealistic and costly demands.

Finally, if the student asserts that the interpreter is not qualified, I believe the institution should evaluate the interpreter's skills.[29] Obviously, the evaluation would need to be conducted by someone who him/herself is qualified. If there is no support for the student's assertion, in my view, the college may continue to use the interpreter. Support for the interpreter is also critical in such situations. The student may need to be reminded that s/he is expected to treat staff with dignity and respect; with a failure to do so potentially leading to suspension of services.

In my view, the answer is not to eliminate the service and substitute notetaking, which is likely to be ineffective. Rather, the institution should consider imposing reasonable conditions upon the student and sticking with them when there is abuse. Nothing within Section 504 or the ADA gives any person with a disability the right to abuse providers, administrators, faculty, and staff.[30] Assisting a student to act responsibly will go a long way towards helping him/her become employable.

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If a program (college) or a state has a standard evaluation of interpreters in place and a deaf person requests an interpreter who has not been qualified by the state's test, would it be necessary for the deaf person to sign some type of waiver? If the program or state denies that person the access to their preferred interpreter, are they in violation of any law?

I am not qualified to speak to any state laws, but as noted above, nothing in either the ADA or Section 504 obligates an institution of higher education to honor an individual's choice of a particular "person" to provide the accommodations. The institution has the right to assign personnel and an obligation to ensure that they are indeed qualified. A college needs to be cautious about delegating its responsibility for ensuring that an individual is qualified. Moreover, the college needs to be able to control the assignment of interpreters, which it loses when it promises a particular individual to a student.

What is your definition of "qualified interpreter?"

The ADA defines a qualified interpreter as one who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.[31]

On several occasions a potential student has requested interpreter services from our college for continuing education classes. Twice, the student cancelled his enrollment on the day of the classes. As a college we were responsible for paying the scheduled freelance interpreters due to the short notice. What rights do we have as a college when working with this person in the future?

On the one hand, we want to make sure that we afford all students fair and equal treatment. The student may argue that he, like any other student, is entitled to add and drop classes. However, unlike other students, the college may incur a significant cost when a student who uses interpreter services makes such a decision late in the game. I see nothing wrong with the institution discussing its concerns with the student, given that the problem has arisen on more than one occasion. Additionally, if your contract with the freelance interpreter service allows cancellation within 48 hours of service, you may wish to contact the student beforehand to verify his commitment to enroll. On the other hand, refusing to provide interpreter services at all in the future would likely put the college in legal jeopardy.

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Is it permissible to terminate services, and refuse to reinstate services, to a student who abuses interpreting services (i.e., takes classes and frequently drops same, resulting in chaos with interpreting schedules)?

As addressed above, a university or college may impose reasonable conditions upon student access to and usage of accommodations. If the consequence of misuse is as severe as suspension of services, it must be emphasized that the conditions need to be (1) reasonable and necessary; (2) clearly spelled out; (3) put in writing; and (4) thoroughly reviewed with the student beforehand. I would encourage the college to develop a written statement that contains the student's signature acknowledging receipt if it intends to suspend services. In all such cases, the college needs to carefully consider individual circumstances. Imposed conditions must allow students good cause exceptions for circumstances beyond the student's control. Certainly, the college must afford the student the opportunity to grieve the suspension.[32] As a practical matter, providers need to educate their superiors about consequences. Administrators should avoid undercutting the effectiveness of the disability services office by enabling the student to do an end-run around it.

If a qualified interpreter is not available, is it better to have a lousy interpreter or no interpreter at all? As a deaf student, am I required to accept such services of an interpreter who is not qualified?

If an interpreter is not considered qualified, then the institution is not meeting its legal obligation. If no qualified interpreter is truly available, perhaps a less qualified one with additional supports or another form of accommodation should be explored.

Please address Title III of the ADA as it relates to private (15+ employees) colleges? What are the responsibilities for providing sign language interpreters as an accommodation? If a college student requests sign language interpreters and the college only offers as an accommodation a fellow student with a laptop computer to type notes while the deaf students watch over the shoulder, what can be done to get sign language interpreters?

First, please note the number of employees has absolutely no bearing on Title III, Public Accommodations. The number of employees is only an issue in Title I – Employment. Second, private institutions of higher education are not exempt from ADA. Only religious institutions are exempt, but most of them receive federal monies such as Pell Grants, and are, therefore, bound by the Rehabilitation Act of 1973, as amended. Accordingly, a private institution, like a public college or university, must provide interpreting services if such is necessary to enable the student to access educational opportunities. Reading notes taken by another student may be sufficient if it proves "effective" or is found to be a *bona fide* substitute due to a demonstrated inability to secure qualified interpreting services.

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Interpreting

Sharaine J. Rawlinson, MSW

At a Junior College level, what credentials or skill level must be required for interpreters?

Interpreters in any postsecondary level should be qualified, preferably be certified by either RID (Registry of Interpreters for the Deaf) or NAD (National Association of the Deaf). Interpreters who possess at least an AAS degree and who have graduated from an interpreter training program, plus have a certain number of years of experience are much more qualified than the recent graduate or someone without formal interpreter training.

Regarding reasonable accommodation in a college/university concerning a patron. When a patron plans to attend a university function, lecture, theater show, etc. – the patron is not a student or a parent – is the university obligated to make the event accessible? Do they provide and pay for the interpreter?

Under both Titles II and III of the ADA and Rehabilitation Act, the college must make its events accessible. It is permissible, however, to indicate that accommodations will be made only upon request by the patron. The accommodation costs must be borne by the college.

Suppose a student is not eligible for VR services, where does the student get money to pay for interpreters if undue hardship occurs?

Neither Ms. Kincaid nor myself are aware of any rulings upholding a denial of interpreter services based on undue *financial* burden. If the failure to provide interpreting services is based upon a demonstrated inability to secure qualified interpreters, the institution must then provide some other form of accommodation to allow the student to participate.[33]

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On what grounds can a student request a different interpreter?

A student may request a different interpreter if s/he is unable to understand the interpreter's signs. The student may also request a different interpreter if there are serious personality conflicts between the interpreter and the student. In the latter case, however, every effort should be made to resolve the conflict, at least to the point of professional neutrality.

If an institution has staff interpreters to provide interpreting services, what are the maximum hours of interpreting that the interpreter should be expected to interpret in highly technical courses? For a day or a 40-hour week, how many hours would be acceptable/appropriate?

Research on this issue has been done at the Rochester Institute of Technology, National Technical Institute for the Deaf, in Rochester, New York. Their research indicates an interpreter can interpret 25 hours a week. Classes in duration of more than one hour must provide breaks. If breaks are not available, then two interpreters must be assigned to the class.

Is a college required to cover interpreter costs for a child wishing to participate in a "Kid's College Continuing Education Program", sponsored by the college?

Yes, absolutely.

Departmental policy gives preference to "staff" interpreters for summer work (appointments are academic year only) over "hourly" interpreters. Student specifically requests a specific hourly interpreter for a summer school course. What gives?

The school may decline the student's request, so long as the "staff interpreter" assigned to the class is qualified and can meet the student's communication needs. The law says reasonable accommodations must be made. In this case, providing a qualified interpreter who can meet the student's communication needs is reasonable, even if it is not the particular interpreter that the student requested.

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If a program (college) or a state has a standard evaluation of interpreters in place and a deaf person requests an interpreter who has not been qualified by the program or state's test, would it be necessary for the deaf person to sign some type of waiver? If the program or state denies that person the access to their preferred interpreter, are they in violation of any law?

There is no federal law requiring a college to provide a student with the interpreter of his/her choice. It is, however, prudent to meet with the student to ascertain that s/he can understand the signed interpretation given by the college's qualified interpreter. If there are difficulties, the college may wish to switch interpreters. A student has a right to reasonable accommodations, not to a specific personal interpreter.

Student requests a specific RID certified interpreter for a course. However, this highly skilled person lives 90 miles away and charges portal to portal of 3 hours or more a day. You have an interpreter available who has worked for you and other schools for several years, but is not as skilled as the RID certified interpreter. May you hire the less skilled interpreter?

This is a sensitive, delicate situation. The college must provide "reasonable accommodations". In this case, the interpreter who has worked at the college for several years may or may not be able to meet the student's needs. If, after trying to utilize the staff interpreter, the student still complains, a joint meeting should be held with the student and interpreter to attempt to resolve the differences. If it becomes obvious that the student cannot understand the interpreter, and/or the interpreter is not able to appropriately interpret for this student, then hiring the RID certified interpreter is definitely the best way to resolve this situation. Keep in mind, however, that certification indicates an interpreter's minimal skills. Just as not all doctors are able to work in surgery, not all interpreters are qualified to interpret in all situations. A skilled and certified interpreter who is of high integrity will let the college and the deaf student know if s/he believes s/he is not qualified in any given situation.

After graduation, a student needs to take a state licensing exam. Who is responsible for providing an interpreter; the college or the State?

The State Department overseeing the testing of graduates is responsible for providing the interpreters for the examinees to the extent the provision of interpreting services does not fundamentally alter the nature of the test.

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If a student indicates that s/he no longer needs an interpreter during a test, is it permissible for the interpreter to insist on getting the instructor's permission first?

Not only is it permissible it is preferable. An interpreter is not there solely for the deaf student; the interpreter is there to facilitate communication between all parties involved. Asking the professor for his/her approval before leaving the examination room is wise, indeed.

Must a college [in this example, Gallaudet University] provide oral interpreters for hard of hearing students? Is this a reasonable request for service?

If a hard of hearing student requests an oral interpreter, the college/university in question should explore providing one to the student, or come up with some other effective means for the student to communicate. Oral interpreters, like their counterparts, sign language interpreters, are reasonable accommodations.

Who decides which interpreter to use? The instructor or the student?

Generally, neither. Specifically, most education situations involve an interpreter scheduler. Interpreters are frequently assigned to specific areas of education so that they can build their knowledge base of the subject matter, thus enabling them to do a better job of interpreting. In the ADA, there is reference to meeting the student's communication needs and the desire to accommodate the student's wishes. If an instructor has a problem with an interpreter, he or she should discuss it first with the interpreter. If the problem continues, then a meeting should be held with the Interpreter Coordinator or the Director of Services for Students with Disabilities. In the event that the interpreter and the instructor cannot resolve their differences, it is best to assign a different interpreter to this student.

If a student who is deaf and works fulltime, enrolls to take a night class at a vocational school and is denied an interpreter, what should the student do?

The student should meet with the Director of Services for Students with Disabilities to determine what steps were taken to fill his request for an interpreter. If this avenue does not deliver satisfaction, the student has the right to appeal to higher levels of the administration, the Office for Civil Rights, and the US Department of Justice.

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An interpreter cannot be found for the student's classes during the day. The same classes are offered in the late afternoon and evening when an interpreter is available. The student refuses to take afternoon/evening classes. Is the college required to keep trying to find a day interpreter?

If a college has made a good faith effort to acquire appropriate services, but was unable to do so, the college may request the student take an afternoon/evening class so long as it does not interrupt or extend his/her graduation date. The key here is "good faith effort"; did the college, in fact, demonstrate a good faith effort? Colleges need to be careful. The fact that the same class is offered in the afternoon or night is not necessarily legally defensible for a failure to provide an interpreter.

Is it legal/appropriate for an institution to have a policy regarding interpreters for special meetings or campus presentations? For example, a notice of a special meeting is posted with time/date. The deaf student goes to the meeting.

Who is responsible to be sure an interpreter is provided? Must the student notify the parties that he/she plans to attend? Is the institution responsible to automatically plan for interpreting services? Hearing students can decide at the last minute to attend or not to attend; must deaf or hard of hearing students be responsible [to notify one way or the other]? How does the student know who arranged the meeting?

Many institutions have campus policies related to accessibility. It is, however, reasonable to require that a student request an interpreter in advance of attending the meeting. The point about hearing students having the ability to decide whether to attend the meeting at the last minute is well taken. Yet, provision of accommodations is, in fact, costly and must be done carefully. By requiring the deaf individual to request an interpreter (or other accommodation), the college is better able to manage its disability revenues budget. If a meeting is sponsored by a certain group at the college, this will be indicated (usually) on the flyer announcing the meeting. If no information is there, contact the Student Union Board.

Auxiliary Services

Notetaking

Jeanne M. Kincaid, Esq.

Are postsecondary institutions required to pay for notetaker services? I understand that institutions are obligated to provide this service; but do colleges/universities need to expend monies or can they use volunteers from the same classes? Due to costs, is it okay for the college to provide an interpreter and a "note taking package" consisting of carbon paper to be given to a fellow hearing student in the class, in order to copy his/her notes? Copy machines are also available for use by students free of charge.

As mentioned above, an institution has an obligation to provide effective accommodations. There is nothing within Section 504 or the ADA that obligates an institution to pay for accommodations. In some instances, most notably, interpreter services, a failure to pay would result in a denial of services. In contrast, some colleges have been very successful with student volunteers providing notetaking services; others have not.

There are several caveats in providing notetaking services, regardless of whether the notetaker is paid. (1) A college may require the student to attend class in order to receive notes.[34] The purpose of the notetaker is to augment what goes on in class, not to be a substitute for class attendance. (2) A college may not require a student to choose between a notetaker and an interpreter.[35] Notetaking services, particularly for a student who is deaf, allows the student to focus on the interpreter without having to simultaneously take notes. As such students typically rely solely on the visual information conveyed by an interpreter; taking notes, which generally requires looking down and writing, would seriously compromise their ability to follow the interpreter. (3) The notetaker must be reliable and provide copies of the notes within a reasonable period of time. Some colleges ensure that there is a back-up notetaker in case the primary notetaker fails to come to class. Some colleges train notetakers, in order to better ensure their effectiveness. (4) The student needs to understand his/her obligation to notify the provider, such as the Disability Services Office, if s/he has a problem securing a notetaker, with the reliability of the notetaker or with the quality of the notes.[36] Many institutions provide the NCR carbon paper that permits the student to receive notes immediately following the class. If the student only has one notetaker who fails to show for class, the class could always be audiotaped for later notetaking, which may also be necessary to do when an interpreter is unable to make it to the class.[37]

Does the ADA and/or Section 504 allow a deaf student to have two "paid services" in the classroom simultaneously such as a paid professional notetaker and an interpreter? If so, should colleges be doing both for each class with a deaf or hard of hearing student enrolled?

Auxiliary Services

Notetaking

Whether or not an accommodation is "paid" or provided voluntarily, for the most part, bears no legal significance, other than in those few limited circumstances where an institution may successfully challenge a request on the basis of undue burden. In my opinion, in most cases assignment of a notetaker to a student who uses an interpreter would be necessary as it would be extremely difficult for an individual to watch an interpreter and simultaneously take notes. So, whether or not the notetaker is paid is irrelevant. Rather, the question you need to ask is whether the service is necessary. Indeed one federal court enjoined a law school from continuing its classes unless it provided a deaf student with *both* an interpreter and a notetaker.[38]

Sharaine J. Rawlinson, MSW

We provide CART for a particular student, and a notetaker, because the transcript from the CART person would cost an extra $50-75 hour, whereas the notetaker is $6 an hour. The student has asked for the transcript instead of the notetaker and we have said "no." Are we safe?

Yes. As your college is providing the student with notes in addition to communication access, there should be no problems. Since the other students (hearing) do not receive a copy of every word the professor says, it follows that providing the full transcript to the deaf student is not required by the institution.

Auxiliary Services

Captioning

Jeanne M. Kincaid, Esq.

A hard of hearing student who is a junior asks for real time captioning for all of his/her classes. Previously, the student has used notetakers and/or assistive listening systems. The student is in good academic standing. Must the college provide real time captioning (obviously, we can if we want to; we want to know the letter and the spirit of the law). Does it matter if (a) the student is failing; or (b) the student is a freshman or recently acquired a hearing loss?

The auxiliary aid of real time captioning has proven to be an effective accommodation for some students with hearing loss, particularly students whose primary language is English. Computer-assisted transcription devices are among those accommodations specifically mentioned in the ADA.[39] Here, whether the college is public or private may have some bearing on the obligation.

As mentioned above, a student who is enrolled in a private school is likely to be protected by Section 504 and if the school is not controlled by a religious organization, Title III of the ADA. Under these two provisions, a private school need only provide effective accommodations. Therefore, if a student has been doing relatively well with other forms of accommodation, the college would likely not be required to honor the student's request for captioning.[40]

On the other hand, if the student is enrolled in a public institution, under Title II of the ADA, institutions must give "primary consideration" to the communication preferences of the individual with a disability.[41] The Appendix to the regulations details when such a request may be denied. One reason is that an another effective accommodation exists to meet the need.[42] Although the courts to date have not had much opportunity to interpret this provision, OCR's Region IX has, in a number of cases, interpreted this provision broadly. In contrast, another region of OCR upheld a university's refusal to provide captioning for extracurricular activities, participation in a grievance and a weekend seminar involving small group discussion.[43]

The questioner is making the correct inquiries: (1) how well is the student doing with other accommodations; (2) would the provision of captioning enable the student to be more integrated and participatory in the classroom; (3) would other computer-assisted notetaking devices serve the student well; (4) cost; (5) availability; and (6) the appropriateness of the medium given the forum for communication (e.g., small group discussion vs. lecture format).

One final note, should a public institution deny the request for captioning on the basis of undue financial or administrative burden, that decision must be made by the head of the institution or his/her designee, submitted in writing, and set forth the reasons why, after considering the institution's resources.[44]

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I have a question about the advantages and disadvantages or strengths and weaknesses of employing the standards that are described in Section 504 of the Rehabilitation Act as compared to the standards outlined in the Americans with Disabilities Act. From my understanding of Title III of the ADA, it is within the power of the institution and its agents (i.e. coordinators of services for Deaf and Hard of Hearing students) to make decisions about what kind of "auxiliary aids" will be provided, perhaps in consultation with other members of their department about the options available and the "best fit" for any given student's needs. However, I was told that Section 504 defines "auxiliary aids" or services as those which are requested by the student, with reasonable consideration by agents of the University. An example might be a student that is taking a heavy technical class containing extensive specialized vocabulary (that interpreters are not qualified to handle) who requests both CART services and sign language interpreters. Is it within the spirit or letter of the law to provide both auxiliary aids? What about the practice of providing a student with a transcript (on disk) of their class sessions as prepared by the CART reporter? Is this also up to the student to request or can the university decide what auxiliary aids are appropriate?

Also, the same concern regarding notetaking services. Now with the new technologies available in the field of notetaking such as C.A.N. and Speech Recognition Software, is it the spirit of Section 504 that students requesting such services plus interpreters and CART (specifically without access to the transcript on disk) are to have these requests honored? Are the provisions in the ADA in harmony with the provisions in Section 504? Which is stronger and provides more guidance?

Like the preceding question in this section, one must first identify whether the institution is public (ADA Title II) or private (ADA Title III). The inquirer is correct in her assertion that the ADA places more emphasis on engaging in an interactive dialogue with the consumer to determine appropriate accommodations than does Section 504. Moreover, as mentioned above, a public institution should give "primary consideration" to the communication preferences of the individual with the disability. However, this language does not mean that the student controls the selection of auxiliary aids and services; that remains exclusively within the purview of the college. On the other hand, the college carries the ultimate burden of demonstrating that its choice of accommodation is indeed effective.

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Accordingly, making a determination as to what is an effective and appropriate accommodation for a particular student must be decided on a case-by-case basis. In some situations, such as those suggested in this question, the specialized vocabulary within a particular field of study may indeed justify honoring a student's request for CART reporting rather than interpreting services. However, I would suspect that the provision of CART reporting *and* interpreting services would be justified in only the most extraordinary circumstances, whereas, the provision of a notetaker along with an interpreter would seem to be justified in most circumstances. Providers should understand that the ADA is not intended to maximize a student's potential or guarantee a student's success. It is certainly a very exciting time in an era where technological solutions are opening many doors to individuals with disabilities. But, the ADA does not suggest that a student be provided with every possible accommodation that might assist him/her. At some point, the accommodations may create an undue burden for the institution. In summary, I believe that with advances in technology, the range of options for providing accommodations has necessarily expanded. In some ways, this therefore makes it even more critical that the provider have an excellent understanding about the consumer's degree of hearing loss, his/her experience with a range of options and then foster an ongoing evaluation of the effectiveness of those services provided in order to fine tune accommodations on an individualized basis.

What can be done about videotapes that have been purchased by the school and have been made by other companies? Must the school caption these videos?

When an instructor uses a video in a classroom, s/he needs to be mindful of how to make the video accessible to a person with a hearing loss. The ideal situation when purchasing or leasing videos is to order them with captioning. Campus departments that are truly mindful of access can avoid many problems in the future. When a school creates its own videos, it should caption them at the time made which is far less costly. In those instances where the video is not captioned, one should first consult the student to determine what might work for him/her. If the student uses ASL, would interpreting the video be appropriate? Sometimes, video clips do not lend themselves well to ASL. Proper lighting must be considered. Does the publisher of the video have a written transcript which it is willing to provide, which is often the case. Will that suffice? Captioning a preexisting video is very time consuming and expensive and would not likely be required under the ADA, so I would work with the student and faculty member to come up with alternatives that might work for all parties involved.

Auxiliary Services

Captioning

What about a hard of hearing participant who does not sign, and requests a transcriptionist or real time captioner as opposed to just a notetaker because he does not sign? We do not have real time captioning available. This is for a week-long conference. We are searching for someone more than "just a notetaker," but we don't have anyone trained. We are trying to work with the student; he does not want to work with us.

I understand the concerns of both the student and the college. For a student who is hard of hearing, notetaking is likely to be insufficient to meet his/her needs. Even an excellent lip reader may be expected to miss more than 50% of spoken material. If other assistive devices are inadequate, real time captioning may offer an excellent accommodation, which also allows the student to be more involved in the classroom experience. At a minimum, the college must satisfy itself that what it is providing the student is effective. Interpretive guidance from the U.S. Department of Justice (DOJ) might be helpful:

"Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication."[45]

From the standpoint of the college, the request may pose an undue burden, which is a defense to a requested accommodation. If there are no qualified captioners in the geographical area, a college may be unable to provide the accommodation even if it wishes to. On the other hand, some captioners advertise that they are capable of offering the service at a distance using modem technology. These are the kinds of things the college should explore. Moreover, as mentioned above, if the college is public and it denies the accommodation, it will need to put its decision in writing in accordance with the requirements listed above.[46]

Sharaine J. Rawlinson, MSW

A professor objects to providing verbatim realtime captioning transcripts to deaf/hard of hearing students in class because the regular (hearing) students do not receive the same benefits. Additionally, the professor forbids tape-recording of their lecture. Does the professor have the right to forbid realtime captioning to deaf/hard of hearing students?

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The professor does not have the right to refuse the student real time captions during class. The issue of supplying a transcript of the class lecture is separate from providing captions during class. If the instructor objects to providing the student with a transcript on the basis of discrimination against the hearing students, the transcript could be made available also to hearing students to copy at their expense. In the event that this is not feasible, a notetaker could be provided for the hard of hearing student in addition to the real time captions. Similarly, if a student needs to tape record lectures as an accommodation (determined by the disability services office), a professor may not deny the student the accommodation unless the professor can demonstrate a compelling rationale.

The cost of providing real-time captioning to students who are late onset deafened and do not sign is prohibitive, especially if the students are not VR qualified. What are some other options?

There are several options available in this situation. First, it may be possible to set up real-time captioning remotely so that the captionist does not have to travel to the college and set up their equipment. This, however, may involve complex logistics to set up portable technology such as screen and microphones and telephone lines to various classrooms.

Another viable option is to hire a typist to type on a laptop computer next to the student, exactly what is being said in class. This gives the student the class information and results in a file that can be used for the student's notes afterward, essentially removing any additional need for notetaking services.

Some late-deafened students can benefit from assistive listening devices (ALDs) such as infrared loops, FM systems, and PocketTalkers©. Generally, creativity and flexibility on the part of both the student and administrators can result in accommodations which are not prohibitive in cost.

Can a deaf or hard of hearing student demand a real time captionist? If so, can a computer assisted notetaker suffice for that or would a paid notetaker using pad and pencil be satisfactory?

Students can request a real-time captionist. The college and student, however, should work together to ascertain if such an accommodation is the best option for the student. For hard of hearing and late deafened students, captioning is often a good accommodation. For students who are prelingually deaf and whose native language is American Sign Language, real-time captioning is likely a less-appropriate accommodation.

Auxiliary Services

Captioning

In an ideal situation, use of CART (computer assisted realtime transcriptionist) reporters is the best option. When resources such as availability of CART reporters, costs, and so forth make this unrealistic, a typist with a computer screen may constitute appropriate services. Pencil and paper DO NOT serve as a reasonable accommodation in lieu of real-time captioning.

What is the college's responsibility related to use of videotapes that are not captioned? Must they be captioned?

Again, some states now require that all new tapes being purchased must be captioned. In the event that a tape is of an older date and still being used, a sign language interpreter (or oral interpreter) should be used.

If a publicly funded college offers teleconference courses, must the broadcast be interpreted or captioned by the college or by the site that receives the broadcast? Does this only have to be done if the audience will have individuals who are deaf or hard of hearing?

The college must make contingency plans for captioning teleconference courses in the event that a student requests such services. All registration materials for the teleconference courses should include a category for requesting special accommodations such as captions and/or interpreters. Some states now require all of their videotape productions to be captioned. If the teleconference course is going to be kept on file for future use, it behooves the college to have captioned the course, rather than going back and captioning the videotape product.

What arrangement would be made to provide realtime captioning for a student not enrolled in a degree program, such as for continuing education classes? Is there a registry of CART reporters that colleges have access to when a student requests CART services?

The arrangement to provide accommodations for a student not enrolled in a degree program is the same as for students who are enrolled in a degree program. Contact the National Court Reporters Foundation, at 703/556-6289/TTY, 703/556-6291/FAX or 800-272-6272/voice for more information on qualified CART providers in your area.

Auxiliary Services

Captioning

Regarding closed captioning – if a video is made on a college campus for a cours. – is the college responsible to automatically caption the tape?

The college is required to make the video accessible to students who are deaf or hard of hearing. This can be done via captions OR by use of interpreters when the student views the video. In some states, however, any video produced or bought by the state or with state funds must be captioned.

Vocational Rehabilitation

Frederic K. Schroeder, Commissioner
Rehabilitation Services Administration

This letter was sent in response to the Editor's request for clarification of the Rehabilitation Services Administration's position as it applies to the provision of rehabilitation services for students who are deaf or hard of hearing at institutions of higher education. It is placed here in its entirety.

United States Department of Education
Office of Special Education and Rehabilitation Services
Rehabilitation Services Administration

September 25, 1998

Sharaine J. Rawlinson, MSW
Associate Director
MCPO, Saint Paul, MN

Dear Ms. Rawlinson,

Thank you for your recent e-mail requesting information about the vocational rehabilitation (VR) process especially as it relates to the provision of services at institutions of higher education. Many, in fact most, of your questions revolve around the issue of the provision of auxiliary aids and services to students who are deaf and hard of hearing attending colleges and universities and who are eligible for VR services.

As you may be aware, on August 7, 1998, President Clinton signed into law The Rehabilitation Act Amendments of 1998 as part of the Workforce Investment Act (WIA) of 1998 thus both amending and extending for five years the authorization of the Rehabilitation Act of 1973 (the Act). As a result, the Rehabilitation Services Administration (RSA) will be developing and issuing regulations implementing the amendments. The Act does, however, include a provision that relates to your concerns.

The biggest change that will affect the population to which you refer is in the comparable service and benefits provision. This language is in Sec.101(a)(8)(B) of the Act entitled "Interagency agreement". This provision states,

Vocational Rehabilitation

> The State plan shall include an assurance that the Governor of the State, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, and the designated State unit, in order to ensure the provision of vocational rehabilitation services described in subparagraph (A) ... that are included in the individualized plan for employment of an eligible individual, including the provision of such vocational rehabilitation services during the pendency of any dispute described in clause (iii).

The Act further delineates that the interagency agreement shall specify agency financial responsibility; conditions, terms, and procedures of reimbursement; procedures for resolving interagency disputes; and the coordination of service procedures. Hence, the provision provides state VR agencies and other public entities with a formal mechanism to negotiate interagency agreements or other types of mechanisms that detail each agency's responsibilities, including financial responsibilities, for the provision of services not exempted from the search for comparable services and benefits. The provision also requires that the Governor ensure that such agreements for interagency coordination take effect and provide for various methods to bring about the coordination.

Therefore, in response to the question you pose with respect to who is financially responsible for the provision of auxiliary aids and services, which would include interpreting, CART, notetaking, and other non-exempted services, the answer will vary from state to state depending upon the terms of the interagency agreements between the VR agency and the public institution of higher education within each state. The RSA is aware of this issue and will remain watchful.

Another significant provision in the Act which affects students who are deaf and hard of hearing attending colleges and universities and who are eligible for VR services, and which will address your questions related to the choice of college or university, is that of informed choice in the development of an Individualized Plan for Employment (IPE). The informed choice provision, Sec. 102(b)(2)(B), states, "An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services, consistent with subsection (d)." This statutory provision is already addressed in the current regulations at 34 CFR 361.52(a).

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In one of your questions, you asked, "If your state VR does have a flat cap on interpreting services, how do you suggest colleges address this with RSA or State VR administration?" According to 34 CFR 361.50, "The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome." In addition, 34 CFR 561.50(b)(2) states, "The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, provided that the schedule is – (i) Not so low as to effectively deny an individual a necessary service; and (ii) Not absolute and permits exceptions so that the individual needs can be addressed." Further, 34 CFR 561.50(b)(3) states, "The State unit may not place absolute dollar limits on specific service categories or on the total service provided to an individual." This, however, does not mean that the most costly services must be provided. It also means, as you asked separately, that there is no nationally established hourly reimbursement rate that VR pays for interpreter services. It is not likely that this regulatory language will change.

You also asked whether it is realistic to think that collaborative agreements regarding financial responsibility can be made and accommodations secured before a student enters college. Given that the IPE must be developed before a student graduates from high school, as required under 34 CFR 361.22(a), there should be sufficient time to arrange for whatever services and accommodations are required. Specifically, 34 CFR 361.22 (a) states, " ... These plans, policies, and procedures must provide for the development and completion of the IWRP before the student leaves the school setting for each student determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection, for each eligible student able to be served under the order." Similarly, a standing interagency agreement as required by Sec. 101.(a)(8)(B) of the Act entitled "Interagency agreement" would specify agency financial responsibility; conditions, terms, and procedures of reimbursement; procedures for resolving interagency disputes; and the coordination of service procedures. This would ensure that disputes over such issues do not delay services to individuals who are not transitioning directly from high school to college.

Two questions were related to eligibility for VR services, one for a particular individual and one for a student with a documented learning disability. In both cases, eligibility would be based on the criterion for eligibility outlined in Sec. 102(a)(1) which states, "An individual is eligible for assistance under this title if the individual – (A) is an individual with a disability under Section 7(20)(A); and (B)requires vocational rehabilitation services to prepare for, secure, retain, or regain employment." Beyond this, some designated State units operate under an order of selection, so individuals must be eligible and able to be served under the order.

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You also asked if the RSA is providing grants to encourage the training of more sign language trained rehabilitation counselors and more interpreters. Under the comprehensive system of personnel development (CSPD) of the Rehabilitation Act Amendments of 1998, Sec. 101(a)(7), the state plan shall "contain provisions relating to the establishment and maintenance of minimum standards to ensure the availability of personnel within the designated State unit, to the maximum extent feasible, trained to communicate in the native language or mode of communication of an applicant or eligible individual." The in-service training of rehabilitation personnel requirements in Sec.302(g)(3)(A) requires that the states use the money to provide in-service training as follows: "Subject to subparagraph (B), at least 15 percent of the sums appropriated to carry out this section shall be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training for rehabilitation personnel, consistent with the needs identified through the comprehensive system for personnel development required by section 101(a)(7)..." Further, the RSA currently provides grants to support two national and ten regional programs to assist in providing a sufficient number of skilled interpreters throughout the country for employment in public and private agencies, schools, and other service-providing institutions to meet the communication needs of individuals who are deaf and individuals who are deaf-blind. The Rehabilitation Act of 1998 continues this effort, and Sec.302(f)(1)(A) states,

> For the purpose of training a sufficient number of qualified interpreters to meet the communication needs of individuals who are deaf or hard of hearing, and individuals who are deaf-blind, the Commissioner, acting through a Federal office responsible for deafness and communicative disorders, may award grants to public or private nonprofit agencies or organizations to pay part of the costs ---
>
> (i) For the establishment of interpreter training programs; or
>
> (ii) To enable such agencies or organizations to provide financial assistance for ongoing interpreter training programs.

Finally, you asked one question about the eligible entities for the "RSA Special Projects Demonstration Grants". The Rehabilitation Act Amendments of 1998 defines eligible entities in Sec. 303(b)(2)(A) as, "...a State vocational rehabilitation agency, community rehabilitation program, Indian tribe or tribal organization, or other public or nonprofit agency or organization, or as the Commissioner determines appropriate, a for-profit organization. The Commissioner may limit competitions to 1 or more types of organizations described in this subparagraph."

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I trust the information provided here will be of help to you. We do wish you the best of luck in proceeding with your publication.

Sincerely,

Frederic K. Schroeder
Commissioner

Vocational Rehabilitation

Jeanne M. Kincaid, Esq.

Who has the responsibility to fund interpreter services in postsecondary settings? Vocational Rehabilitation or the institution? Has VR withdrawn payment nationwide since the passage of the ADA?

Our central office of VESID (Vocational Rehabilitation) is considering the possibility of establishing economic need determinators for college students who get VESID sponsorship, and apply that towards interpreting service delivery to students. What do you think of that? (For example, if a student does not meet economic need, then we don't provide interpreters; if they do meet economic need, then VESID provides interpreters. Those students who do not meet the economic need guidelines must inform their college that it (the college) must find [and fund] interpreters.

Although vocational rehabilitation services are primarily funded with federal dollars and are subject to federal regulations, they operate largely pursuant to state administrative standards, which is why we see such a range of delivery options throughout the entire country. Many states only provide vocational rehabilitation services to persons who are low income. Some vocational rehabilitation agencies have drastically reduced services to individuals who are enrolled in postsecondary institutions, on the basis that such institutions have an independent obligation to provide and pay for these services. It is true that a college or university may not deny accommodations to students who are ineligible for vocational rehabilitation.[47] Nor may an institution require a student to apply for vocational rehabilitation services as a condition of receiving accommodations from the college.[48]

The beauty of state-wide decision-making for vocational rehabilitation is that it allows institutions to have a greater say in how services are delivered to its residents. Providers are encouraged to play an active role here, educating vocational rehabilitation of the necessity of sharing in accommodating students so that they are more likely to receive the full range of services they need to better ensure their success in the employment world.

Vocational Rehabilitation

Please comment on the responsibility of community colleges/universities towards provision and payment of interpreter services for VR customers. Additionally, will RSA come out with a policy regarding payment of interpreters? How does this relate – the implementation of ADA with previous case law involving VR such as *Jones vs. IIT*?

In my opinion, nothing about the Americans with Disabilities Act specifically addresses this concern. Nor am I aware of any legislative history to support the notion eschewed by some that the passage of the ADA was intended to place the responsibility of providing and paying for auxiliary aids, such as interpreters, solely on colleges and universities. It is my understanding that RSA makes two arguments. First, in the comment section to the Section 504 of the Rehabilitation Act regulations, it is suggested that even though colleges and universities may be responsible to provide such accommodations, it is presumed that third parties, e.g., vocational rehabilitation agencies, will share in the cost of such provision. In contrast, nowhere in the ADA statute, accompanying regulations or comments is reference made to any responsibility of state vocational rehabilitation agencies for the accommodation costs of students enrolled in postsecondary institutions. I thus surmise that VR may be taking the position that this silence amounts to Congressional intent to place the entire burden of accommodation on institutions of higher education.

The second argument that VR appears to make is that amendments to the Rehabilitation Act itself clarify that such agencies are to be the payor of last resort. In other words, only when no other entity can be held responsible for the cost of accommodating individuals with disabilities should VR fund such costs. Accordingly, since virtually every higher education institution in the country has an independent obligation to provide reasonable accommodations including interpreter services, either under the ADA, Section 504 or both, VR takes the position that it has no independent obligation to do so. However, I agree with the inquirer that the holding in the *Jones* case,[49] which rejected VR's argument that it is the payor of last resort, is not effectively overruled by the ADA or changes to the Rehabilitation Act since its issuance.

If your state VR *does* have a flat cap on interpreter services, how do you suggest colleges address this – within your level of administration or within the State VR administration?

I suggest that providers deal honestly and directly with both administrations. It is important that the college leadership, which often has greater access to other agency and community leaders, understand the breadth of this issue. Moreover, as mentioned above, since these funding decisions are being made at a state-wide level, it would be prudent to engage in a dialogue at that level as well. Some

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providers have formed a task force composed of representatives from a variety of schools to lobby their state VR agencies. In reality, for the most part, this is not an issue that rests with consumers of services, because the college ultimately is responsible for ensuring the provision of necessary accommodations. Accordingly, in my view, college personnel have a tremendous stake in this issue and need to band together for a workable solution.

If funding sources say they want to pay for a Ford, rather than a Cadillac (re: interpreter skill level) for interpreter services, what is the college's liability in this area of providing qualified vs. adequate?

If the college remembers that it always has an independent obligation to provide the accommodations, it will most likely be unable to defend itself based on a third party's failure to meet the college's legal obligation. I encourage the college to educate the funding source. If the funding source only offers enough funds to, for example, hire a signer who fails to meet the legal definition of qualified interpreter under the ADA, the college will likely need to add to the pot so that a qualified interpreter is hired, if one exists.

When an institution and VR disagree on who will pay: what happens to the services to the student during the disagreement? What if the student goes without interpreter services for say, the first two weeks of school? What can the student do? Who will help the student get the service?

The student should never be held hostage to a funding dispute between VR and the college. The college and VR should "agree to disagree" but the college must provide the service to the student pending resolution of a funding dispute. Remember, not all students are even eligible for VR services, nor may a college require a student to apply for such services as a condition of receiving accommodations from the college.

If a VR agency can prioritize its requests to provide accommodations and leave some eligible clients without services, why can't colleges and universities? When resources are scarce, why can one entity legitimately fail to provide services and the others can't? Does the ADA apply to colleges and universities but not VR agencies?

The distinction falls within the purpose of the organization's existence. Like colleges, VR agencies have eligibility criteria. Thus a college applicant must meet certain academic criteria requisite to admission. Similarly, the underlying legislation governing rehabilitation services permits VR agencies to set priorities for services. Whether a college student or a VR client, both entities must reasonably accommodate qualified individuals, i.e., those individuals who meet their respective eligibility criteria. Finally, remember that VR agencies are in the business of servicing individuals with disabilities. Whereas, colleges and

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universities are in the business of providing education to a wide array of individuals, a small portion of whom have disabilities. The organizational missions are vastly different and VR agencies, unlike institutions of higher education, provide much more than reasonable accommodations. They often provide evaluations, training, job coaching, counseling and purchase a variety of assistive devices that remain with the person as s/he transitions from school to work.

Can VR tell a student to attend a similar program at a college where there are support services in place to save money?

I do not believe that VR has the right generally to insist that a student attend a particular college solely based on financial considerations. On the other hand, VR may rightfully encourage a student to consider enrolling at a campus that offers a wide array of services that it believes that the student may need to succeed, which is the goal of both the student and the VR agency. For example, a college such as the National Technical Institute for the Deaf located on the campus of the Rochester Institute of Technology provides comprehensive services that far exceed those required by the ADA and Section 504. Thus, it would not be improper, depending on the student's skill level and resources, for the VR agency to recommend a college that is more likely to meet the student's unique needs.

Sharaine J. Rawlinson, MSW

Does ADA apply for all ages and situations (work & education) or only after completion of high school?

ADA applies to most situations but with some limited exceptions for religiously owned or operated facilities open to the public. Employers with 15 or more employees are covered by the ADA Title I - Employment; Title II - Public Services; Title III - Public Accommodations; Title IV - Telecommunications; and Title V - Misc.

ADA works in tandem with the Individuals with Disabilities Education Act (IDEA; formerly known as Public Law 94-142, The Education of the Handicapped Act). It also functions in connection with the Rehabilitation Act of 1973, As Amended.

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How can postsecondary institutions communicate to the deaf and hard of hearing students the services or lack of services available? Before or after admissions?

All postsecondary institutions except for a handful, are required to comply with Section 504, ADA, or both. When a student who is known to be deaf or hard of hearing inquires about the institution, a handbook of accommodations for students with disabilities should be made available to the student. Should a student choose to attend the institution, the college must make every effort to deliver reasonable accommodations, attempting to meet the student's desired services.

Administration Issues

Jeanne M. Kincaid, Esq.

If a student receives an incomplete or withdraws due to absenteeism or not completing class assignments, is the college or university obligated to duplicate the same level of services initially provided when the student retakes the class?

In my opinion, yes, to the extent those accommodations/services met the college's legal obligation in the first instance. If students generally are permitted to withdraw or take an incomplete with the understanding they may finish later, so too then must the institution afford the opportunity to a student with a disability. It would be a hollow right if accommodations did not follow as the student would be less likely to succeed.

Are 504 and ADA really being enforced? It appears that they may be rendered ineffective by simply ignoring or pleading ignorance. How much real compliance exists? What means of enforcement (beyond an individual pursuing a suit) are being used?

Laws are only as effective to the extent they are enforced. In my view, one cannot help but look around this country today and see the tremendous impact of the ADA, especially with barrier removal. Is it enough? Absolutely not. DOJ, which receives thousands ADA of complaints annually, targets certain areas for enforcement. In my view, they have made accessibility for persons who are deaf/hard of hearing a priority. One of the first cases DOJ filed under the ADA was brought against a private company assisting candidates in passing certification boards. DOJ has investigated a host of ADA complaints against law enforcement personnel who have failed to provide interpreters. It has taken on a number of state court systems for their discriminatory practices. Private litigants are suing hospitals for failing to provide interpreters to assist patients in giving informed consent.

In the area of college/university compliance, I think the government by and large, relies on OCR for enforcement. In my experience, OCR has seriously investigated the complaints of consumers. Many people believe that educational institutions, compared with the rest of society, are way ahead in understanding and attempting to meet their obligations. As with anything else, consumers and their willingness to pursue claims will play a large role in enforcement.

Some professors and instructors complain about having to wear a microphone (or refuse to wear one) for a PocketTalker, for example, or resist the interpreter in the classroom as an infringement of academic freedom. Is there any merit to this argument?

Administration Issues

In most cases, I would think there would be no merit to the claim of infringement of academic freedom by the use of assistive devices and interpreters. Just as professors cannot cloak themselves in the garb of academic freedom while sexually harassing a student or making derogatory comments regarding someone's race, so too, academic freedom will not shield unlawful conduct that impinges upon the civil rights of persons with disabilities. Whenever this question is raised, I encourage the provider to go back to the professor and try to determine the source of the professor's discomfort. In some instances, placement of the interpreter could be a legitimate concern. In most instances, I find it is a lack of awareness that results in this type of resistance. Some other forms of accommodation, such as test taking accommodations, do have the potential of interfering with academic freedom. However, I cannot think of a way in which the two aforementioned aids would do so. I also remind faculty that if a student can demonstrate intentional discrimination by the faculty member, the professor may be held personally liable for his/her conduct.

When a high school student takes a college course, is the high school or the college responsible to provide/pay for support services?

This, too, is a complex question where more facts are needed. If a student is receiving special education services and is enrolled in one or more college classes pursuant to an Individualized Education Plan (IEP), there is a strong argument that the high school could be held responsible for reimbursing the college for accommodation costs.

On the other hand, if a college has an arrangement with a secondary setting that it will accept qualified students to take certain courses, unless it enters into an agreement otherwise, the college could be held responsible for accommodation costs. Moreover, it would be unlawful, in my view, for the college to deny admission to students solely on the basis of the cost associated with accommodation. This is an important area of consideration where a student might get caught in the middle. I encourage the college to work out these arrangements early on so that the student may receive necessary accommodations without delay.

Is it legal/appropriate to require a student to adhere to the conditions of the course syllabus regarding attendance, punctuality, etc."

Yes it is appropriate to place the same demands upon students with disabilities that we would on nondisabled students. In fact, to the extent that a college, for example, provides a student with notes from classes or tape-recorded lectures and the student does not attend, the ADA is undermined and the disability services office can expect to lose credibility with the faculty. As mentioned above, one must remind oneself: What is the purpose of an accommodation? Certainly not to foster absenteeism.

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Keep in mind, however, as mentioned in the section pertaining to interpreter services, although it is permissible to place obligations on students to attend class and be punctual, these conditions must be publicized, be understood by the student, and contain a good cause exception for circumstances beyond the student's control.

Finally, before penalizing a student with a disability for absenteeism or tardiness, it would be prudent for the disability services provider to ensure that the professor holds non-disabled students to the same standard.

What is the cut-off that changes an undue burden to a hardship? If a college has 30 students and 10 are deaf, paying for interpreters would be an undue hardship. If a college has 30,000 students and 10 are deaf, the cost is a drop in the bucket. How can a university prove undue hardship?

Like all determinations under Section 504 and the ADA, "undue burden," which is a legal standard is assessed on a case-by-case basis. As stated earlier in this document, undue burden is measured by assessing the cost of accommodation against the resources of the entity's entire budget.[50] As the inquirer suggests, refusing to provide interpreter services on the basis of undue burden would be difficult to justify when the enforcement agency or a court of law reviews the institution's entire budget. To my knowledge, I am unaware of any agency or court ruling upholding a refusal to provide interpreter services solely based upon cost.[51]

Please address the issue of RMI (repetitive motion injury) prevalent amongst interpreters. Institutions must be educated about the RMI issue and why two or more interpreters are needed for assignments. Is there recourse if a college refuses to pay for more than one interpreter for a three hour class, for example, even though it puts the interpreter at risk for RMI?

I agree with the questioner that there is a serious need for education of college administrators with respect to overusing interpreters. If the interpreter is a staff interpreter, i.e., an employee of the college, the college will ultimately be shooting itself in the foot as overuse of interpreters will undoubtedly result in increased workers compensation claims and loss of interpreting staff, who are currently in very short supply. If the interpreter is a member of a union, I encourage him/her to have the union assist in advocating for safe workplace practices. Most employers understand the importance of risk management and perhaps the disability services office needs to bring someone in to help provide that awareness.

Independent interpreters should seriously consider refusing to accept positions that put themselves at risk. Ultimately the college will soon learn that they must act responsibly in using interpreters or they will not have any, which is not a legal defense in future litigation.[52]

Administration Issues

If a college has multiple campuses, can deaf students be required to attend only one of the campuses to ensure quality and quantity of services?

In my opinion, no. I believe it is improper to require any student to attend a certain location for access reasons. All campuses need to be made accessible so that students with disabilities have an equal opportunity to select the courses at the same locales as other students. Which campus the student attends can be very important to him/her. Distance, traffic, convenience, and social concerns are important factors that go into deciding where a student should enroll.

On the other hand, if the college is in a part of the country where there is unquestionably a shortage of qualified interpreters and the college is attempting to make the most use of what is available, I see nothing wrong with sitting down with the student and explaining the college's concerns, seeking the student's understanding and support. In an extreme example, a student's refusal to attend another campus may result in a denial of interpreting services, in the hopefully rare instance where the demand exceeds availability. In such cases, the college may find that it is better to be up front with students so that they may assist the college in spreading the services around in a manner that meets the greatest needs of the student population.

If a student is an international student and is not eligible for permanent residency, does this affect who pays for services? INS regulations state that the student is financially responsible for all expenses. Are interpreter services included or should this be part of tuition?

At the outset, I am unfamiliar with INS regulations and I cannot support or deny the statement made as to what the INS regulations state. If this is a major concern on your campus, I suggest that you have the college's legal counsel review the appropriate regulations. I have never understood the civil rights laws of this land to be applicable to citizens only and I would err on the side of serving students, regardless of their origin or citizenry by not charging them for the accommodations they would normally receive if they were considered legal citizens of this country.

Essential functions of our nursing program list ability to hear internal sounds, as well as ability to hear a patient's cries or moans (with or without accommodation, of course.) As interpreted at this time, this, in effect, would make a totally deaf person unqualified for the program. Are we within legal bounds?

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In my opinion, yes. To be considered qualified, a student/applicant must meet not only any necessary academic standards, but technical standards as well.[53] In some professions, possessing certain senses at a minimal level, would be deemed essential. But, as your question noted, if a person lacks the technical standard but could meet it with reasonable accommodation, s/he should be considered otherwise qualified. Nursing is the type of profession that likely has legitimate technical standards requiring certain senses. Recall that the only U.S. Supreme Court decision interpreting Section 504 in the postsecondary education context involved an applicant with a hearing loss seeking enrollment in a nursing program. The Court upheld the program's decision denying admission because it demonstrated that hearing was an essential standard that could not be reasonably accommodated.[54] To provide the student with what she needed to be successful would have resulted in a fundamental alteration of the program, not required by Section 504.

Nonetheless, with advances in medicine and technology, what might not be considered reasonable today may be in the future; and what is essential today should be periodically revisited so as to avoid unnecessary discrimination. Finally, although a nursing program could likely deny admission, administrators should realize that many nursing programs have admitted students with hearing loss. Although the law may not require admission, many programs are willing to go beyond the minimum requirements, recognizing that although some students may be unable to fulfill all requirements, there are many nursing positions where hearing may not be considered essential.

Is it permissible to place limitations on monies spent on interpreters for extracurricular activities?

In my view, cost limitations violate Section 504 and the ADA.[55] Having said that, I believe that colleges probably enjoy more flexibility in meeting the needs of students pursuing extracurricular activities. We go back to the issue of what may be considered a personal need versus an activity of the college. Moreover, as mentioned above, where a college can demonstrate that despite due diligence, it is unable to locate and fund qualified interpreters, it will likely be able to justify allocating its limited resources to meeting academic needs first.

Law requires equal access. Isn't requiring a deaf student to notify administrators that s/he will miss class inherently unequal treatment?

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I agree that, strictly speaking, when a college imposes a condition on deaf/hard of hearing students, such as class notification, which it does not impose upon nondisabled students, the college is not being "equal." However, the ADA and Section 504 permit institutions to impose "eligibility" criteria if necessary.[56] As mentioned above, OCR has upheld such a condition, in recognition of the importance of balancing the needs of the institution to provide cost effective services while attempting to meet the needs all students with disabilities.[57]

If a student refuses to sign a written service agreement, may the institution legally deny that student service?

Yes, the college may.[58] Again, the conditions imposed within the agreement must be reasonable and fully explained to the student. Some colleges have moved to such a requirement, especially with respect to the provision of paid services, such as interpreting services, due to cost considerations and to assist students in responsibly accessing services. If the agreement is read and signed by the student, it better protects the college in the event it decides to suspend services should the student not abide by its terms.

I believe that every state should establish an auxiliary aid budget line item that would allow for all postsecondary institutions or programs to access funds to provide easier access to higher education for disabled/deaf students. Do you believe that terms such as "high cost student" should be used as they are stigmatizing? It seems to me this lack of planning on the state level has stigmatized and discriminated against any student who makes such a request. What do you think? Also, isn't forcing a deaf/disabled student to become a VR consumer and/or accept an auxiliary aid that may or may not meet the needs of the student a violation of the ADA? Is comparing the cost of the interpreter to the program cost a violation of the ADA?

First of all, the Department of Justice believes that it is a violation of the ADA to require a student to register with a VR agency as a condition of receiving accommodations from an institution of higher learning.[59] I also agree that when determining whether an accommodation poses an undue burden, it is improper to measure the standard against "program" assets as opposed to the overall assets of the college.[60] I agree with the inquirer that society's mission of eliminating discrimination on the basis of disability would be better accomplished if states took more effective leadership on the issue. Accommodations do cost money and to the extent that a particular person is seen as a "cost," the inquirer is correct, it can be very stigmatizing.

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If a student is disabled, what legal rights does he/she have under the ADA if a service is not provided?

All colleges that receive federal financial assistance must adopt and publish a grievance procedure pursuant to Section 504. Under Title II of the ADA, public institutions are independently obligated to entertain ADA complaints. Thus, the student has the right to grieve any dispute involving a denial of access or services which he or she believes is unjustified. Any person so aggrieved may also file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). In all likelihood, the state in which the college is situated may also have a civil rights office that will entertain complaints of disability-based discrimination. Finally, a student may choose to bring a legal action in state or federal court. Attorney's fees may be available if the student prevails.

Due to the fact that there a limited number of interpreters available, can a higher education institution put a cap on the number of deaf students to admit?

No. Section 504 specifically prohibits the imposition of limitations upon the number or proportion of individuals with disabilities who may be admitted.[61]

A student who is basically oral can get B or C grades without direct support, using only class notes, but with real-time can raise grades to B and A. What are rights to request added services to get higher grades, not just passing, but to do well?

Institutions of higher education are obligated to provide reasonable accommodations that are "effective."[62] To be considered effective, an accommodation must afford the student the opportunity to receive equality in benefits and services in comparison to that afforded nondisabled students.[63] Equality of benefits and services do not guarantee a person with a disability the right to an *identical* level of achievement as nondisabled students. Rather, Section 504 and the ADA require an *equal opportunity* to achieve that level of achievement afforded nondisabled students.[64]

One way of measuring effectiveness is student performance, i.e., grades. As neither the ADA nor Section 504 is intended to maximize a student's potential, the receipt of B's or C's is evidence of effectiveness. Accordingly, OCR has often rejected a student's claim that an accommodation is ineffective unless it results in allowing him/her to receive the highest grades of which s/he is capable of achieving.[65]

On the other hand, if an accommodation provides the student with demonstrably superior performance capabilities, a service provider should consider the

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provision of such, if within the resources of the institution, as better grades may impact the student's ability later to gain admission to graduate school.[66]

Sharaine J. Rawlinson, MSW

What is the minimum service for a deaf person who can't work with interpreters. If a university offers a service and provides it, and then in the middle of the semester stops it, can a deaf person challenge that? I am speaking of real-time captioning service.

Most certainly, the deaf student can and should challenge a university that does not provide accommodations that meet their communication and learning needs. It is difficult to define "minimum service". The law clearly states that postsecondary institutions must provide reasonable accommodations for students with disabilities. Students who are deaf have an absolute right to the same information as their non-deaf peers. In the scenario above, I would have to ask what did the university offer in lieu of real-time captioning? It is not acceptable to offer students an accommodation, then rescind it without first talking with the student and agreeing upon alternative accommodation plans.

Is the University responsible/obligated to provide accommodations (real-time captioning, notetaking, ALD) for students identified as hard of hearing when the student chooses not to use hearing aids, even if he or she is a good candidate for amplification? Issue of personal responsibility

The college has no right to force a student to use hearing aids. Only the student and their audiologist can determine if they might benefit from such amplification. Regardless, a college cannot deny a student accommodations if they have a documented disability.

What are the implications of 504 for small, private schools regarding accommodation and costs?

Under the Rehabilitation Act of 1973, as amended, Section 504, any institution receiving $2,500 or more in federal monies, directly or indirectly, must provide reasonable accommodations. Thus, if a private school receives federal monies such as Pell Grants, federal research grants, and so forth, they must provide accommodations to their students. ADA also applies to these institutions. ADA does not have a contingency item in its mandate; it simply states reasonable accommodations must be made, unless to do so would create undue hardship upon the institution.

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According to information related at a Regional Workshop sponsored by AHEAD last October: "A college or university must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the institution." Yet I understand that various Vocational Rehabilitation offices provide funding for interpreting services for college classes. What is your understanding of this situation?

Indeed, Vocational Rehabilitation services vary from state to state. What is important to understand here is that ADA does not say how a university must provide reasonable accommodations, just that it must do so. Some VR counselors are paying institutions for auxiliary aids, such as interpreters, for their deaf students, while others are paying only tuition. Under the ADA, colleges and universities must find ways to provide accommodations. Claiming "undue financial hardship" is probably almost impossible for an institution of higher education because of the massive budgets with which they work.

ADA was not written, however, to over-ride the Rehabilitation Act of 1973, as amended, which states that any institution receiving $2,500 in federal monies, directly or indirectly, must provide reasonable accommodations. In fact, the Rehabilitation Act was the cornerstone of the Americans with Disabilities Act of 1990. Thus, most institutions of higher education are bound by both laws because almost all receive Pell Grants, federal grants for various purposes including research, and so on.

Vocational Rehabilitation was designed to assist colleges and universities in their quests to educate individuals with disabilities. ADA was to be a stronger, more far-reaching mandate than the Rehabilitation Act. Currently, states are awaiting direction from the Rehabilitation Services Administration Commissioner which, hopefully, will result in more standard delivery methods of funding for auxiliary services.

How is undue hardship documented by the school? Example: Vocational school states undue hardship to pay for interpreter for a student who does not want VR. A school told student that he/she needs to pay more for tuition to make up for cost of interpreter.

A school may not, as stated in the ADA, pass on the costs of accommodations to the student. Therefore, the vocational school mentioned above is in clear violation of ADA.

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A school can document their full budget, laying out all of their revenues, endowments, expenses, and so forth for the Department of Justice to review, if it wishes to claim undue hardship. It is up to the DOJ to review the college's claim and make a determination as to whether or not they are, in fact, being placed in a position of undue hardship.

What if the student is from out of state, who pays?

A student's state of residence has no bearing on a college's obligation to provide reasonable accommodations, but may be a factor in determining which VR agency is responsible for servicing the student.

Residence Halls

Jeanne M. Kincaid, Esq.

What are residence hall requirements for deaf and hard of hearing students? Can housing be set aside in one area for deaf/hard of hearing?

Like all students with disabilities, students who are deaf or hard of hearing are entitled to equal opportunity in residence life. Colleges must provide comparable, convenient and accessible housing at no extra cost.[67] Whether a college is in compliance with Section 504 and ADA requirements largely depends on the age of the building in question. Any residence hall constructed since 1977 or substantially modified since then face much stricter requirements under these laws. Generally, the hall would need to be fully accessible consistent with the applicable standards.

Many residence halls on college campuses were constructed prior to 1977, thus, providing "program" access meets the statutory requirements. Under the program access standards, a college need not make all of its halls accessible.[68] Therefore, a college may choose to equip certain halls with accessible features and not others, again, if the buildings were built prior to 1977 and have not undergone substantial modifications. For older construction, there is no requirement, as opposed to new construction, for flashing alarms, for example. However, the college would need to have an evacuation procedure to ensure that its deaf/hard of hearing residents are safely evacuated.[69] Again with older buildings, the location and number of TDDs to install depends on the number of students and their needs. In terms of setting aside one area for serving students with limited hearing, colleges need to be mindful not to unlawfully segregate students with disabilities.[70] I always encourage campuses to poll its student body in determining need. Some students, particularly students who are deaf, find it most helpful to be housed with or near other deaf students due to their unique communication needs. With the increased emphasis on "theme" houses, I can envision a group of students with hearing loss wanting to have their own unit, like that offered to other campus groups. Such "segregation" by choice is very different from the university setting aside such housing on its own initiative.

Equipment

Jeanne M. Kincaid, Esq.

If the college has four pay phones, a TTY should be available. Who is responsible for funding that phone? The university or the phone company?

Under the ADA's Accessibility Guidelines for Buildings and Facilities, for every four public pay phones there must be at least one TTY installed.[71] If the phones are owned by the college or university, my interpretation would be that the responsibility lies with the college.

Is a college responsible for providing special chairs for computer classes if an individual has more than a hearing loss? What about providing software for a student to use at home to keep up with classwork?

The ADA applies to a range of disabling conditions. Of course, some students may have multiple disabling conditions. Naturally, the college is obligated to reasonably accommodate all of the student's disabling conditions. In some limited circumstances, purchasing specialized furniture, such as computer chairs, may be justified. The provider would be wise to require documentation to establish that the student has a condition in which purchasing special equipment is necessary. I encourage colleges to use their own resources, such as ergonomic specialists, to assist in determining what equipment might be appropriate in a particular case. With respect to the purchase of software for home use, neither the ADA nor Section 504 obligates an institution of higher education to provide accommodations for personal study. To answer this aspect of the question more completely, I would need more factual background.

Sharaine J. Rawlinson, MSW

What is a college's responsibility in supplying adaptive equipment? Is the college required to purchase equipment?

The college is responsible for the provision of adaptive equipment such as TTY's, flashing lights, and assistive listening devices. It is up to the institution whether it purchases or leases the equipment. Regardless, the provision must be made at no cost to the student.

Equipment

You were discussing whether adaptive equipment and interpreter or real-time captioning can be used simultaneously. This brings up another question. Can a hard of hearing person who doesn't understand sign language request the college to provide both auditory training/FM equipment, and real-time captioning at the same time so they can use their auditory skills and still have a printed reference to clarify the "distorted" sounds? Are universities or VR responsible for providing the auditory trainer

The college/university is required to provide the auditory trainer. It is common practice to offer a student both an ALD and realtime captioning.

Footnotes

[1]Summaries of most of the court and agency rulings cited herein are available in a booklet that Ms. Kincaid has published through the Association of Higher Education and Disability (AHEAD). Copies may be purchased by contacting AHEAD at 614/488-4972. For ease of citation, Ms. Kincaid references Section 504 of the Rehabilitation Act, which applies to all institutions that receive federal financial assistance, as Section 504; Title II of the ADA, which applies to public institutions, such as state or local community colleges, as Title II; and, Title III of the ADA, which applies to private schools, as Title III. Finally, NDLR refers to the National Disability Law Reporter.

[2]See State Department of Education (SC), Case No. 04-90-1068, 2 NDLR ¶ 153 (OCR Region IV 1991).

[3]See 34 CFR § 104.44(a) [Section 504].

[4]See 34 CFR § 104.44(c) [Section 504]; 28 CFR §36.309 [Title III].

[5]See 28 CFR § 35.130(b)(1)(iv), (2) and (d) [Title II] and 28 CFR § 36.203(a), (b) [Title III].

[6]See 34 CFR § 104.44(c) [Section 504].

Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual or speaking skills (except where such skills are the factors that the test purports to measure).

See also 28 CFR § 36.309 [Title III].

[7]Spokane Falls Community College (WA), 11 NDLR ¶ 227, Case No. 10-97 2012 (OCR Region X 1997).

[8]42 USC § 12182(b)(2)(A)(i) [ADA statute]; 28 CFR § 35.130(b)(8) [Title II]; 28 CFR § 36.301(a) [Title III].

[9]See San Jose State University (CA), Case No. 09-93-2034-I, 4 NDLR ¶ 358 (OCR Region IX 1993).

[10]See e.g., Texas Tech University, Case No. 06-90-2008 (OCR Region VI 1990) (faulting university for imposing 30 day notice requirement without exception).

[11]See e.g., Chesapeake College (MD), Case No. 03-96-2078 (OCR Region III 1996) (upholding college policy obligating students to register with disability services office two months prior to semester and request accommodations two weeks in advance of need); Rochester Institute of Technology (NY), Case No. 02-92-2049 (OCR Region II 1993) (taking no issue with handbook statement that institution only guarantees interpreters and notetakers to students who register early).

[12]Cf. California Western School of Law, Case No. 09-92-2004 (OCR Region IX 1992) (no violation for permitting parent to provide interpreter services, but may not request same).

[13]See 28 CFR § 35.102(a) [Title II].

Footnotes

[14]See College of St. Scholastica (MN), Case No. 05-92-20953, NDLR ¶ 196 (OCR Region V 1990).

[15]See EEOC v. Arabian American Oil Co., 59 U.S.L.W. 4225 (1991); Response to Smith, 5 NDLR ¶ 20 (DOJ 1993).

[16]See e.g., Salem State College (MA), Case No. 01-95-2089 (OCR Region I 1996).

[17]See 34 CFR § 104.4(b)(2) [Section 504]; 28 CFR § 35.130(b)(1) and Commentary [Title II]; 28 CFR § 36.202 and Title III technical assistance manual [Title III].

[18]28 CFR § 35.154 [Title II]; 28 CFR § 36.303 [Title III].

[19]Wentworth Institute of Technology (MA), Case No. 01-93-2080, 5 NDLR ¶ 190 (OCR Region I 1993) (upholding use of notetakers and professor assistance in lieu of interpreter based on institutes diligent efforts and national interpreter shortage despite institute's diligent efforts). See also University of Massachusetts, Boston, Case No. 01-90-2067 (OCR Region I 1991) (upholding university's decision not to provide interpreter for writing course based on shortage of interpreters in Boston area).

[20]University of California, Davis, Case No. 09-92-2101-I, 4 NDLR ¶ 108 (OCR Region IX 1993). See also College of the Redwoods (CA), Case No. 09-93-2082-I (OCR Region IX 1993).

[21]For example, certain religious schools are exempt from the ADA's Title III coverage, thus they may have no federal legal obligation to accommodate students with disabilities. However, if they receive federal financial assistance, they would be subject to Section 504. Importantly, subject to certain limitations, religious affiliation is no bar to claims of employment discrimination based upon disability under Title I of the ADA.

[22]34 CFR § 104.44(d)(2) [Section 504]; 28 CFR § 35.135 [Title II]; 28 CFR § 36.306 [Title III].

[23]See Technical Assistance Manuals for Titles II and III.

[24]See 34 CFR § 104.47(c) [Section 504]. If the college provides "significant assistance" to a fraternal organization, it must assure itself that the organization is not unlawfully discriminating against persons with disabilities.

[25]See e.g., University of Maryland, University College, Case No. 03-89-2039, 1 NDLR ¶ 36 (OCR Region III 1990) (rejecting argument that Section 504 is limited to consideration of the budget of continuing education; undue burden is measured against university's entire budget).

[26]Colleges who serve few students who are deaf may find no need to impose such rules. Some students will understandably view any condition or contract as an affront. Thus, before undertaking such an approach, one might wish to consult with other institutions that have developed such contracts or imposed such conditions.

[27]University of California, Davis, Case No. 09-92-2101-I, 4 NDLR ¶ 108 (OCR Region IX 1993).

[28]28 CFR § 35.160(b)(2) [Title II].

Footnotes

[29]See California State University, Chico, Case Nos. 09-96-2121; 09-96-2125; 09-96-2126 (OCR Region IX 1996) (resolution agreement detailing methods for evaluating interpreter and captioner qualifications).
[30]See Cumberland County College (NJ), Case No. 02-95-2012 (OCR Region II 1996) (based on past improper conduct, permissible to require student to agree not to question/harass clinic staff); University of Oklahoma, Case Nos. 06-96-2002; 06-96-2068 (OCR Region VI 1996) (university justified in refusing to answer TDD calls from student with no hearing or speech impairment who tied up line and harassed staff).
[31]28 CFR § 35.104 [Title II]; 28 CFR § 36.104 [Title III]. Notably, Section 504 does not define "qualified", but one might assume that enforcement agencies and courts will apply the ADA standard.
[32]See 34 CFR § 104.7 [Section 504]; 28 CFR § 35.107] [Title II].
[33]28 CFR § 35.150(a)(3) [Title II]; 28 CFR § 36.303(f) [Title III].
[34]See Cosumnes River College (CA), Case No. 09-96-2002 (OCR Region IX 1996).
[35]See Prince v. Rutgers, The State University School of Law - Camden, Civ. Act. No. 89-4740 (SSB) (D.N.J., complaint filed November 14, 1989). See also Western Oregon State College, Case No. 10-91-2001 (OCR Region X 1991).
[36]California Western School of Law, Case No. 09-92-2004 (OCR Region IX 1992).
[37]See e.g., University of California, Davis, Case No. 09-92-2101-I, 4 NDLR ¶ 108 (OCR Region IX 1993).
[38]Prince v. Rutgers, The State University School of Law – Camden, Civ. Act. No 89-4740 (SSB) (D.N.J. 1989), See also Western Oregon State College, Case No. 10-91-2001 (OCR Region X 1991).
[39]28 CFR § 35.104 [Title II]; 28 CFR § 36.303 [Title III].
[40]Rochester Institute of Technology, Case No. 02-92-2049 (OCR Region II 1993) (upholding institution's refusal to honor student's request for cued speech transliteration based on student's above average performance using RIT's form of interpretation).
[41]28 CFR § 35.160 [Title II]. See e.g., Los Rios Community College District (CA), Case Nos. 09-93-2214-I; 09-93-2215-I; 09-93-2216-I (OCR Region IX 1994).
[42]Commentary to 28 CFR § 35.160 [Title II].
[43]See Ball State University (IN), Case No. 05-96-2191 (OCR Region V 1996).
[44]See 35 CFR § 35.164 [Title II]. In one case, a court faulted a state agency for denying a requested accommodation under this provision without going through this process. See Tugg v. Towey, 864 F. Supp. 1201, 5 NDLR ¶ 311 (S.D. Fla. 1994).
[45]Commentary to Title II.
[46]28 CFR § 35.164 [Title II].
[47]See United States v. Board of Trustees of the University of Alabama, 908 F.2d 740 (11th Cir. 1990).

Footnotes

[48]Office for Civil Rights Policy (12/11/95); Department of Justice Policy (10/5/95); 7 NDLR ¶ 470.

[49]Jones v. Illinois Department of Rehabilitation Services, 504 F. Supp. 1244 (N.D. Ill. 1981) (holding that the state VR agency was not precluded by the Rehabilitation Act from providing interpreter services to deaf college students irrespective of the college's obligation to provide same); see also Schornstein v. New Jersey Division of Vocational Rehabilitation Services, 519 F. Supp. 773 (D.N.J. 1981).

[50]28 CFR § 35.154 [Title II]; 28 CFR § 36.303 [Title III].

[51]See e.g., United States v. Board of Trustees of the University of Alabama, 908. F.2d 740 (11th Cir. 1990); University of Maryland, University College, Case No. 03-89-2039, 1 NDLR ¶ 36 (OCR Region III 1990).

[52]See Naropa Institute (CO), Case No. 08-93-2041, 4 NDLR ¶ 355 (OCR Region VIII 1993) (faulting institution for requiring student to enroll in classes that extended only two hours to avoid having to provide two interpreters).

[53]See 34 CFR § 104.3(k)(3) [Section 504].

[54]Southeastern Community College v. Davis, 442 U.S. 397, 99 S.Ct. 2361 (1979). But see Grantham v. Moffett, No. 95-30617 (5th Cir. 1996) (upholding $181,000 verdict against university in favor of deaf student denied opportunity to student teach and dismissed from program).

[55]See University of California, Davis, Case No. 09-92-2101-I, 4 NDLR ¶ 108 (OCR Region IX 1993).

[56]28 CFR § 35.130(b)(8) [Title II]; 28 CFR § 36.301(a) [Title III].

[57]University of California, Davis, Case No. 09-92-2101-I, 4 NDLR ¶ 108 (OCR Region IX 1993).

[58]See e.g., University of California, Davis, Case No. 09-92-2101-I, 4 NDLR ¶ 108 (OCR Region IX 1993).

[59]Office for Civil Rights Policy (12/11/95); Department of Justice Policy (19/5/95); 7 NDLR ¶ 470.

[60] See Appendix A to Part 35 Interpreting 28 CFR § 35.150(a) [Title II]; 28 CFR § 36.104 [Title III].

[61] 34 CFR § 104.42(b)(1).

[62] See 28 CFR § 35.130(b)(1)(iii) [Title II]; 28 CFR § 36.202(c) [Title III]; 34 CFR § 104.4(b)(1)(iii) [Section 504].

[63] See 28 CFR § 35.130(b)(1)(ii) [Title II]; 28 CFR § 36.202(b) [Title III]; 34 CFR § 104.4(b)(1)(iii) [Section 504].

[64] See 28 CFR § 35.130(b)(1)(iii) [Title II]; 28 CFR § 36.202(b) [Title III]; 34 CFR § 104.4(b)(2) [Section 504].

[65] Rochester Institute of Technology, (OCR Region II 1993); Complaint No. 02-92-2049. See also, Petersen v. Hastings Public Schools; 4 NDLR ¶ 197 (D. Neb. 1993), *aff'd* 31 F.3d 705, 21 IDELR 377 (8th Cir. 1994).

[66] See Petersen v. Hastings Public Schools; 4 NDLR ¶ 197 (D. Neb. 1993), *aff'd* 31 F.3d 705, 21 IDELR 377 (8th Cir. 1994).

[67]34 CFR § 104.45 [Section 504].

Footnotes

[68]34 CFR § 104.22 [Section 504].

[69]North Idaho College, Case No. 10-91-2030, 5 NDLR ¶ 484 (OCR Region X 1994).

[70]34 CFR § 104.22(b) [Section 504]; 28 CFR § 35.150(b)(1) [Title II]; 28 CFR § 36.203 [Title III].

[71]See Appendix A to 36 CFR Part 1191 at § 4.1.3(17)(c)(i). For public use areas subject to Title II, at least one interior TTY must be provided if any interior public phones are provided. See Appendix A to 36 CFR Part 1191 at § 4.1.3(17)(c)(iv). Stadiums and other places of public accommodation also must provide at least one interior TTY if they provide at least one interior pay phone. See Appendix A to 36 CFR Part 1191 at § 4.1.3(17)(c)(ii).